

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 301

[REG-138326-07]

RIN 1545-BH22

#### Tax Avoidance Transactions; Hearing Cancellation

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Cancellation of notice of public hearing on proposed rulemaking.

**SUMMARY:** This document cancels a public hearing on proposed rulemaking under section 6231 of the Internal Revenue Code that allows the IRS to convert partnership items to nonpartnership items when the application of the unified partnership audit and litigation procedures of sections 6221 through 6234 (TEFRA partnership procedures) with respect to certain tax avoidance transactions interferes with the effective and efficient enforcement of the internal revenue laws.

**DATES:** The public hearing, originally scheduled for June 4, 2009, at 10 a.m., is cancelled.

**FOR FURTHER INFORMATION CONTACT:** Richard A. Hurst of the Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration), at [Richard.A.Hurst@irs.counsel.treas.gov](mailto:Richard.A.Hurst@irs.counsel.treas.gov).

**SUPPLEMENTARY INFORMATION:** A notice of public hearing that appeared in the *Federal Register* on Friday, February 13, 2009 (74 FR 7205), announced that a public hearing was scheduled for June 4, 2009, at 10 a.m., in the auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is under section 6231 of the Internal Revenue Code.

The public comment period for these regulations expired on May 14, 2009. Outlines of topics to be discussed at the

hearing were due on May 15, 2009. The notice of proposed rulemaking and notice of public hearing instructed those interested in testifying at the public hearing to submit an outline of the topics to be addressed. As of Wednesday, May 20, 2009, no one has requested to speak. Therefore, the public hearing scheduled for June 4, 2009, is cancelled.

**LaNita Van Dyke,**

*Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).*

[FR Doc. E9-12167 Filed 5-26-09; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

#### 30 CFR Parts 250, 256, and 260

RIN 1010-AD06

[Docket ID MMS-2007-OMM-0069]

#### Leasing of Sulphur or Oil and Gas and Bonding Requirements in the Outer Continental Shelf

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The MMS proposes to update and streamline the existing Outer Continental Shelf leasing regulations, and to clarify implementation of the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996. The rule would reorganize and reorder leasing requirements to reflect the leasing process more efficiently, as it has evolved over the last 26 years. The rule also proposes changes to parts 250 and 260 that relate to the proposed revisions to part 256.

**DATES:** Submit comments by September 24, 2009. The MMS may not fully consider comments received after this date. Submit comments to the Office of Management and Budget on the information collection burden in this proposed rule by June 26, 2009. This does not affect the deadline for the public to comment to MMS on the proposed regulations.

**ADDRESSES:** You may submit comments on the rulemaking by any of the following methods. Please use the Regulation Identifier Number (RIN)

1010-AD06 as an identifier in your message. See also Public Availability of Comments under Procedural Matters.

• *Federal eRulemaking Portal:* <http://www.regulations.gov>. Under the tab "More Search Options," click "Advanced Docket Search," then select "Minerals Management Service" from the agency drop-down menu, then click the submit button. In the Docket ID column, select MMS-2007-OMM-0069 to submit public comments and to view supporting and related materials available for this rulemaking. Information on using *Regulations.gov*, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's "User Tips" link. The MMS will post all comments.

• *Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Regulations and Standards Branch (RSB); 381 Elden Street, MS-4024, Herndon, Virginia 20170-4817.* Please reference "Leasing of Sulphur or Oil and Gas and Bonding Requirements in the Outer Continental Shelf, 1010-AD06" in your comments and include your name and return address.

• *Send comments on the information collection in this proposed rule to: Interior Desk Officer 1010-AD06, Office of Management and Budget; 202-395-5806 (fax); e-mail: [oir\\_docket@omb.eop.gov](mailto:oir_docket@omb.eop.gov).* Please also send a copy to MMS.

**FOR FURTHER INFORMATION CONTACT:** For comments or questions on procedural issues, contact Kumkum Ray, Regulations and Standards Branch, at [kumkum.ray@mms.gov](mailto:kumkum.ray@mms.gov), or at (703) 787-1604. For questions on technical issues, contact Jane Roberts, Leasing Division, at [jane.roberts@mms.gov](mailto:jane.roberts@mms.gov), or at (805) 389-7836.

**SUPPLEMENTARY INFORMATION:** This proposed rule completely rewrites the existing regulations at 30 CFR part 256, Leasing of Sulphur or Oil and Gas and Bonding Requirements in the Outer Continental Shelf (OCS). The major components of part 256 include: (1) The 5-Year Leasing Program mandated by section 18 of the OCS Lands Act, 43 U.S.C. 1344; (2) preparing for a lease sale; (3) issuing, maintaining, and ending a lease; and (4) bonding requirements. The MMS is proposing to reorganize and reorder the regulations

last rewritten in 1982 to reflect the leasing process more efficiently, as it has evolved over the past 26 years. This proposal would eliminate several sections of existing text as redundant or unnecessary. Redundant sections include subpart D, Joint Bidding, of 30 CFR part 260. We do not intend these proposed changes to alter existing requirements concerning joint bidders. Some new sections would standardize or clarify practices that may not have been uniform in all three OCS regional offices. A new section (§ 256.621) on lease term pipelines was added using the language in 30 CFR part 250, subpart J, final rule at § 256.62(g). Other sections clarify processes required by legislation, enacted since these regulations were last rewritten, such as the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996, concerning pro rata liability for monetary obligations; or by recently

promulgated regulations, such as the Department of the Interior's (DOI) non-procurement debarment rules. There are also changes that will assist MMS in meeting its stewardship responsibilities and its role as a regulator. Other changes include: (1) Stating in the rule at § 256.500(b) that for the purposes of an area-wide bond, "area-wide" refers to the limits of a planning area as defined and administered by MMS; and (2) information from lessees is now required to help assess bonding for decommissioning of OCS facilities and to assess other liabilities associated with decommissioning.

The MMS published a final rule in the **Federal Register** on September 12, 2008 (73 FR 52917), to implement section 104(c) of the Gulf of Mexico Energy Security Act of 2006 (GOMESA), Public Law 109-432. It was designated subpart N, §§ 256.90 through 256.95. We have

redesignated subpart N to subpart I, §§ 256.900 through 256.905. We have added GOMESA definitions for Bonus or royalty credit, Central planning area, Coastline, Desoto Canyon OPD, Destin Dome OPD, Eastern planning area, and Pensacola OPD. We have included a table in § 256.401 for ease in determining what evidence MMS requires to qualify a bidder and/or lessee from various entities, including several additional business organizational forms that now exist in the offshore industry.

We propose to retain tables related to bonding for the same reason. The following derivation tables track the current regulations, section by section, to the proposed rule sections. Most of the proposed changes clarify regulatory language. The tables also list other reasons for changes.

DERIVATION TABLE FOR 30 CFR PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

| Current regulations section | Proposed rule section | Nature of change   |
|-----------------------------|-----------------------|--|
|                             | 250.1717(e) .....     | New requirement for submission of expense information on plugging and abandonment. |
|                             | 250.1729(d) .....     | New requirement for submission of expense information on platform removal.         |
|                             | 250.1743(b)(8) .....  | New requirement for submission of expense information on site clearance.           |

DERIVATION TABLE FOR 30 CFR PART 256—LEASING OF SULPHUR OR OIL AND GAS AND BONDING REQUIREMENTS IN THE OUTER CONTINENTAL SHELF

| Current regulations section  | Proposed rule section                         | Nature of change  |
|--|---|---|
| Subpart A—Outer Continental Shelf Oil, Gas, and Sulphur Management, General. | Subpart A—General Provisions ....             | Redesignated.   |
| 256.0 .....  | 256.100(a) .....                              | Updated.  |
|  | 256.101 .....                                 | New section.  |
| 256.1 .....  | 256.102 .....                                 | Simplified.   |
| 256.2 .....  | .....   | Eliminated as unnecessary to state policy from the Act.                                     |
| 256.4 .....  | .....   | Eliminated as redundant to the Act.   |
| 256.5 .....  | 256.103 .....                                 | Eliminated unnecessary terms.   |
| 256.7 .....  | .....   | Eliminated as unnecessary, as any cross-references are included in the appropriate section. |
| 256.8 .....  | 256.202 .....                                 | Simplified language.  |
| 256.10(a) .....  | 256.100(b) .....                              | Simplified language.  |
| 256.10(b) through (d) .....  | .....   | Eliminated as repetitive with 30 CFR part 252.  |
| 256.11 .....   | 256.630 .....                                 | Simplified language and reorganized.  |
| 256.12 .....   | 256.206 .....                                 | Simplified language.  |
| Subpart B—Oil and Gas Leasing Program.                                       | Subpart B—Oil and Gas 5-Year Leasing Program. | Clarified name.   |
| 256.16 .....   | 256.200–202 .....                             | Simplified language and reorganized.  |
| 256.17 .....   | 256.203–205 .....                             | Simplified.   |
| 256.19 .....   | 256.201 .....                                 | Simplified.   |
| 256.20 .....   | 256.202(c) .....                              | Simplified.   |
| Subpart C—Reports From Federal Agencies.                                     | .....   | Eliminated as repetitive with the Act.  |
| 256.22.  |   |   |
| Subpart D—Call for Information and Nominations.                              | Subpart C—Preparing for a Lease Sale.         | Reorganized, see below.   |
| 256.23 .....   | 256.300 .....                                 | Reorganized.  |
| 256.25 .....   | 256.302 .....                                 | Simplified.   |
| Subpart E—Area Identification and Tract Size.                                | Subpart C—Preparing for a Lease Sale.         | Reorganized in proposed subpart C.  |

## DERIVATION TABLE FOR 30 CFR PART 256—LEASING OF SULPHUR OR OIL AND GAS AND BONDING REQUIREMENTS IN THE OUTER CONTINENTAL SHELF—Continued

| Current regulations section                 | Proposed rule section                                   | Nature of change   |
|---|---|--|
| 256.26 .....                                | 256.301 .....   | Reorganized.   |
| 256.28 .....                                | 256.306 .....   | Reorganized.   |
| Subpart F—Lease Sales .....                 | Subpart C—Preparing for a Lease Sale.                   | Reorganized in proposed subpart C.   |
| 256.29 .....                                | 256.303 .....   | Simplified.  |
| 256.31 .....                                | 256.304, 305 .....                                      | Reorganized.   |
| 256.32 .....                                | 256.306 .....   | Simplified language.   |
| 256.32(e) .....                             | .....   | Eliminated as relevant time period has passed.   |
| Subpart G—Issuance of Leases .....          | Subpart D—Issuance of a Lease.                          | Reorganized, see below.  |
| 256.35 .....                                | 256.400 .....   | Simplified language and reorganized.   |
| 256.35(c) .....                             | 256.402(b), (c) .....                                   | Simplified language and reorganized.   |
| .....                                       | 256.402(a), 403 .....                                   | New sections to require compliance with new government-wide/DOI non-procurement debarment rules covering principals.   |
| 256.37(a), (b) .....                        | 256.600,601 .....                                       | Simplified language, clarified terminology, and reorganized. The 5-year requirement codifies provision in Form MMS–2006 (12/87).   |
| 256.37(c) .....                             | 256.602,603 .....                                       | .....  |
| 256.38 .....                                | .....   | Eliminated as unnecessary section title.   |
| 256.40 .....                                | .....   | Eliminated as redundant. Any definitions will be in § 256.103, Definitions.  |
| 256.41 .....                                | 256.411,412 .....                                       | Simplified and eliminated unnecessary language, reorganized.   |
| 256.41(d) .....                             | 256.414 .....   | Simplified language.   |
| 256.43 .....                                | 256.411–413 .....                                       | Simplified language and reorganized.   |
| 256.43(a) .....                             | .....   | Eliminated unnecessary definitions.  |
| 256.44 .....                                | 256.402 .....   | Simplified language.   |
| 256.46(a), (b) .....                        | 256.410 .....   | Simplified language.   |
| 256.46(c) through (g) .....                 | 256.401 .....   | Simplified language, added detail for clarity, and included additional business organizational forms that exist offshore.  |
| 256.46(h) .....                             | 256.402(b) .....  | Simplified language.   |
| .....                                       | 256.402(a), 403 .....                                   | New sections to require compliance with new government-wide/DOI non-procurement debarment rules covering transactions at tier below principals.  |
| .....                                       | 256.404 .....   | New section with timeframe for notification of certain business changes to keep lease records accurate and up-to-date.   |
| 256.47 .....                                | 256.411(c), (d); 416; 420 .....                         | Simplified language and eliminated some as unnecessary.  |
| 256.47(c) .....                             | 256.416(c) .....  | Simplified language and added two options with respect to high bids, if tied.  |
| 256.47(e)(1), (e)(3) .....                  | 256.417 .....   | Simplified language and reorganized delegation of authority from the Secretary to the Director for reconsideration of rejected bids.   |
| 256.47(f) .....                             | 256.420(b) .....  | Clarified that deferred bonuses must be paid within 5 years per 43 U.S.C. 1337(a)(2).  |
| 256.47(g) .....                             | 256.420(c) .....  | Clarified that successful bidder may be held liable for full bid amount under certain circumstances.   |
| 256.49 .....                                | 256.420 .....   | Discussion of form for other minerals eliminated as redundant within 30 CFR part 281.  |
| 256.50 .....                                | 256.421 .....   | Simplified.  |
| Subpart H—Rentals and Royalties [Reserved]. | .....   | Eliminated as unnecessary as never used.   |
| Subpart I—Bonding .....                     | Subpart E—Financial Accountability and Risk Management. | Reorganized, see below.  |
| 256.52 .....                                | 256.500 .....   | The MMS may adjust the amount of general bonds in the future by using the Implicit Price Deflator for Gross Domestic Product.  |
| 256.52(e) .....                             | 256.521 .....   | Changed period for providing additional bond coverage from 6 months to 45 days.  |
| 256.52(f), (g) .....                        | 256.502 .....   | Requires 115 percent of bond value if using Treasury securities to meet new value fluctuation requirements from Treasury Department.   |
| 256.53 .....                                | 256.501 .....   | Clarified minimum level of bond for specific activity.   |
| 256.53(d) .....                             | 256.510 .....   | Separated provisions concerning supplemental bond from those concerning bond level changes due to leave activity. New provision to allow MMS to require demonstration of bond sufficiency. |
| 256.54 .....                                | 256.503 .....   | Specified that the bond guarantees all non-monetary lease obligations.   |
| .....                                       | 256.503(b) .....  | New section to retain right to require electronic filing of bonds after 90-day notice.   |
| .....                                       | 256.504 .....   | New section clarifies whose non-monetary lease obligations must be covered.  |
| .....                                       | 256.505 .....   | New section clarifies lessee/operator bond.  |
| 256.55 .....                                | 256.520 .....   | Simplified.  |
| 256.56 .....                                | 256.512 .....   | Simplified.  |
| 256.57 .....                                | 256.511 .....   | Clarified language and eliminated imprecise use of term, indemnity.  |
| 256.58 .....                                | 256.522 .....   | Clarified and separated termination of period of liability and cancellation of a bond.   |

DERIVATION TABLE FOR 30 CFR PART 256—LEASING OF SULPHUR OR OIL AND GAS AND BONDING REQUIREMENTS IN THE OUTER CONTINENTAL SHELF—Continued

| Current regulations section  | Proposed rule section  | Nature of change  |
|--|--|---|
| 256.59 .....   | 256.523.   | Reorganized.  |
| 256.59(e) and (g) .....  | 256.524, 525 .....   |   |
| Subpart J—Assignments, Transfers, and Extension.                   | 256.526.<br>Subpart F—Maintaining a Lease ...                      | Reorganized, see below.   |
|  | 256.605 .....  | New section to clarify obligations of record title owners.  |
|  | 256.606 .....  | New section to clarify obligations of operating rights owners.  |
|  | 256.610 .....  | New section to iterate statutory requirement for approval prior to sale, exchange, assignment or transfer of a lease.     |
| 256.62(a) .....  | 256.611 .....  | Simplified language and clarified that can disapprove assignment if assignor and/or assignee has unsatisfied obligations. |
| 256.62(b) .....  | 256.412 .....  | Included in section on joint bidding.   |
| 256.62(c) .....  | 256.617 .....  | Simplified language.  |
| 256.62(d) .....  | 256.616 .....  | Simplified language.  |
| 256.62(e) .....  | 256.618 .....  | Simplified language.  |
| 256.62(f) .....  | 256.616 .....  | Simplified language.  |
| 256.62(g) .....  | 256.621 .....  | New section on lease term pipelines.  |
| 256.63 .....   | 256.104 .....  | Redesignated in Subpart A.  |
| 256.64, 256.68 .....   | 256.613 .....  | Reorganized and clarified.  |
| 256.64(a) .....  | 256.612 .....  | Clarified that subleases restricted to 2-depth levels.  |
| 256.64(a)(7) .....   | 256.620(a).  |   |
| 256.64(a)(8) .....   | 256.620(b).  |   |
| 256.64(e) through (h) .....  | 256.614.   |   |
| 256.64(i) .....  | 256.619.   |   |
| 256.65 .....   | 256.612(b) .....   | Reorganized and clarified.  |
| 256.67 .....   | 256.614 .....  | Reorganized and clarified.  |
| 256.68 .....   | 256.613(a) .....   | Reorganized and clarified.  |
| 256.70 .....   | 256.601(a) .....   | Reorganized and clarified.  |
| 256.71 .....   | 256.601(b) .....   | Reorganized and clarified.  |
| 256.72 .....   | 256.601(c) .....   | Reorganized and clarified.  |
|  | 256.601(d) .....   | New section to clarify effect of production from a unitized lease.  |
| 256.73 .....   | 256.601(a) .....   | Reorganized and clarified.  |
| Subpart K—Termination of Leases                                    | Subpart G—Ending a Lease .....                                     | Reorganized, see below  |
|  | 256.700 .....  | New section to clarify what happens if you do not take certain actions to maintain a lease.                               |
| 256.76 .....   | 256.701 .....  | Simplified.   |
| 256.77 .....   | 256.702 .....  | Simplified.   |
| Subpart L—Section 6 Leases .....                                   | .....  | Eliminated as unnecessary repetition of 43 U.S.C. 1335(b). Leases of other minerals covered in 30 CFR part 281.           |
| 256.79, 256.80<br>Subpart M—Studies .....                          | .....  | Eliminated as unnecessary recitation of internal procedures.  |
| 256.82   | Subpart H [RESERVED].  |   |
| Subpart N—Bonus or Royalty Credits for Exchange of Certain Leases. | Subpart I—Bonus or Royalty Credits for Exchange of Certain Leases. | Redesignated.   |
| 256.90—256.95 .....  | 256.900—256.905.   |   |
| Appendix A to part 256—Oil and Gas Cash Bonus Bid.                 | .....  | Eliminated as unnecessary repetition of bid form.   |

DERIVATION TABLE FOR 30 CFR PART 260—OUTER CONTINENTAL SHELF OIL AND GAS LEASING, SUBPART D

| Current regulations section   | Proposed rule section | Nature of change  |
|---|-----------------------|---|
| Part 260—Outer Continental Shelf Leasing, Subpart D—Joint Bidding.<br>260.301–303 | 256.411 .....         | Removed subpart D from part 260. Proposed §256.411 simplified language and eliminated duplicative provisions of current §§ 256.38–256.44. |

**Procedural Matters: Regulatory Planning and Review (Executive Order (E.O.) 12866)**

This proposed rule is not a significant rule as determined by the Office of Management and Budget (OMB) and is not subject to review under E.O. 12866.

This proposed rule primarily rewrites existing regulations that govern the offshore Federal leasing process for sulphur and oil and gas subject to the exclusive jurisdiction of the United States. The rule is rewritten in simple, clear language, and reorganized to reflect the steps in the leasing process

as they have evolved. Minor changes are proposed to make certain practices uniform among the three OCS regional offices.

(1) This proposed rule would not have an effect of \$100 million or more on the economy. It would not adversely affect in a material way the economy,

productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The proposed rule would rewrite 30 CFR part 256 in plain language, and would contain virtually the same reporting and recordkeeping requirements and attendant costs as the current regulations. A cost-benefit and economic analysis is not required.

(2) This proposed rule would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) This proposed rule would not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. Nominal user fees are not material in size or nature. The rule proposes a new fee for recording certain secondary lease interests, \$27; continues existing fees for submitting non-required documents, \$27; and for requesting an approval of the assignments or transfers of certain lease interests, \$186.

(4) This proposed rule would not raise novel legal or policy issues. The rule largely rewrites existing regulations.

#### **Regulatory Flexibility Act**

The Department of the Interior certifies that this proposed rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This proposed rule would affect lessees and potential lessees, of which there are approximately 130 different companies. These companies are generally classified under the North American Industry Classification System (NAICS) Code 211111, which includes companies that extract crude petroleum and natural gas. For this NAICS code classification, a small company is one with fewer than 500 employees. The MMS estimates that of the 130 lessees and operators that explore for and produce oil and gas on the OCS, approximately 90 are small businesses (70 percent).

The primary economic effect of this rule on small businesses would be the cost associated with information collection (IC) activities. The rule proposes to rewrite 30 CFR part 256 and would add three new requirements for 30 CFR part 250, subpart Q. The proposed rule contains virtually the same burden hour requirements and non-hour cost burdens as the current regulations. The changes in reporting requirements would not significantly increase the IC burden on respondents—large or small. The MMS estimates an annual increase of 2,396 hours in the paperwork burden from that imposed by

the current regulations. There would also be one new \$27 non-hour cost burden for recording certain secondary lease interests resulting in an annual increase of \$18,900 (\$27 × an estimated 700 filings). A Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the actions of MMS, call 1-888-734-3247. You may comment to the Small Business Administration without fear of retaliation. Allegations of discrimination/retaliation filed with the Small Business Administration will be investigated for appropriate action.

#### **Small Business Regulatory Enforcement Fairness Act**

The proposed rule is not a major rule under 5 U.S.C. 804(2) the Small Business Regulatory Enforcement Fairness Act. This proposed rule:

a. Would not have an annual effect on the economy of \$100 million or more.

b. Would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

#### **Unfunded Mandates Reform Act**

This proposed rule would not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The proposed rule would not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

#### **Takings Implication Assessment (E.O. 12630)**

Under the criteria in E.O. 12630, this proposed rule does not have significant takings implications. The proposed rule is not a governmental action capable of interference with constitutionally protected property rights. A Takings Implication Assessment is not required.

#### **Federalism (E.O. 13132)**

Under the criteria in E.O. 13132, this proposed rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. This proposed rule would not substantially and directly affect the relationship between the Federal and State governments. To the extent that State and local governments have a role in OCS activities, this proposed rule would not affect that role. A Federalism Assessment is not required.

#### **Civil Justice Reform (E.O. 12988)**

This rule complies with the requirements of E.O. 12988.

Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

#### **Consultation With Indian Tribes (E.O. 13175)**

Under the criteria in E.O. 13175, we have evaluated this proposed rule and determined that it has no potential effects on Federally recognized Indian tribes. There are no Indian or tribal lands in the OCS.

#### **Paperwork Reduction Act (PRA) of 1995**

The proposed rule contains a collection of information that is being submitted to OMB for review and approval under 44 U.S.C. 3501 *et seq.* As part of our continuing effort to reduce paperwork and respondent burdens, MMS invites the public and other Federal agencies to comment on any aspect of the reporting and recordkeeping burden. If you wish to comment on the Information Collection (IC) aspects of revised 30 CFR parts 250 and 256, you may send your comments directly to OMB (see the **ADDRESSES** section of this notice). Please identify your comments with Docket ID: MMS-2007-OMM-0069 in the subject line. Send a copy of your comments to the Regulations and Standards Branch (RSB), *Attn:* Comments; 381 Elden Street, MS-4024; Herndon, Virginia 20170-4817. You may obtain a copy of the supporting statement for the IC by contacting the Bureau's Information Collection Clearance Officer at (202) 208-7744.

The PRA provides that an agency may not conduct or sponsor, and a person is not required to respond to, an IC unless it displays a currently valid OMB

control number. The OMB is required to make a decision concerning the IC contained in these proposed regulations between 30 to 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB received it by June 26, 2009. This does not affect the deadline for the public to comment to MMS on the proposed regulations.

The title of the IC for this proposed rule is 30 CFR Part 256, Leasing of Sulphur or Oil and Gas and Bonding Requirements in the Outer Continental Shelf, 30 CFR Part 250, Subpart Q, and 30 CFR Part 260, Outer Continental Shelf Oil and Gas Leasing. The MMS estimates there are approximately 130 respondents (Federal oil and gas or sulphur lessees and/or operators). Responses to this IC are required to obtain or retain a benefit and are mandatory. The frequency of response varies, but is primarily on occasion. The IC does not include questions of a sensitive nature. The MMS will protect proprietary information according to section 26 of the OCS Lands Act; 30 CFR 256.100(b) of the proposed regulation; the Freedom of Information Act (5 U.S.C. 552), its implementing regulations at 43 CFR part 2; and 30 CFR 250.197, Data and information to be made available to the public or for limited inspection.

This IC is a total rewrite of 30 CFR part 256, Leasing of Sulphur or Oil and Gas and Bonding Requirements in the Outer Continental Shelf and adds three new requirements to 30 CFR part 250, subpart Q, Decommissioning.

The IC required by the current 30 CFR part 250, subpart Q, Decommissioning, is approved under OMB Control Number 1010-0142. There are three new proposed requirements that affect subpart Q, for a total of 820 burden hours. The MMS will use the information collected for these proposed requirements to help MMS assess the abandonment liability for each lease. This abandonment liability will be used to set supplemental bond requirements for each operator, and these supplemental bonds are used to protect the Federal Government against defaults should an operator go into bankruptcy. When final regulations are promulgated, the IC burdens for the 30 CFR part 250, subpart Q requirements will be incorporated into its respective IC for that regulation (1010-0142, 17,991 burden hours, expiration 11/30/10).

The IC required by the current 30 CFR part 256 regulations is approved under OMB Control Number 1010-0006. There are several new requirements that will impose an additional 1,576 burden hours and \$18,900 in non-hour cost burdens to the already approved hours under 1010-0006 (17,103 burden hours, \$603,125 non-hour cost burdens, expiration 5/31/2010). The MMS will use the information collected under 30 CFR part 256 to determine if applicants are qualified to hold leases in the OCS. Specifically, MMS uses the information to:

- Verify the qualifications of a bidder on an OCS lease sale. Once the required information is filed with MMS, a qualification number is assigned to the bidder so that duplicate information is not required on subsequent filings.
- Develop the semiannual List of Restricted Joint Bidders. This identifies parties ineligible to bid jointly with each other on OCS lease sales, under limitations established by the Energy Policy and Conservation Act of 1975.
- Ensure the qualification of assignees and track operators on leaseholds. Once a lease is awarded, the transfer of a lessee's interest to another qualified party must be approved by an MMS regional director, regional supervisor, or regional manager (Pacific Region only). Also, a lessee may designate an operator to act on the lessee's behalf. This designation must be approved by MMS before the designated operator may begin operations.
- Document that a leasehold or geographical subdivision has been surrendered by the record title holder.
- Keep track of who owns which lease term pipeline since they are not currently documented on submitted information. Also, during the decommissioning process, if operators have changed since the beginning of the lease—decommissioning operations are worked between the companies. But, after all decommissioning activities are complete, if a safety hazard still remains, then MMS will need to know that the responsibility for compliance lies with the original operator.
- Update the corporate database that is used to determine what leases are available for a lease sale and the ownership of all OCS leases. Non-proprietary information is also publicly available from the MMS corporate database via the Internet.

The MMS also uses various forms relating to this subpart. The forms allow lessees to submit the required

information in a standardized format that helps MMS process the data in a more timely and efficient manner. There are five forms associated with this IC, MMS-150, MMS-151, MMS-152, MMS-2028, and MMS-2028A. The first three forms are used for assignment purposes and the last two forms are used to hold the surety liable for the obligations and liability of the principal/lessee or operator.

The proposed rule imposes changes to the existing IC hour burdens. These changes are:

- Submit expense information on plugging and abandonment (+520 hours).
- Submit expense information on platform removal (+150 hours).
- Submit expense information on site clearance (+150 hours).
- Notify MMS if you or your principals are excluded, disqualified, or convicted of a crime—Federal non-procurement debarment; request exception (+75 hours).
- Provide acceptable bond for payment of a deferred bonus (+¼ hour).
- Submit statement excluding payment obligations of co-lessee or designated operator (+1 hour).
- Submit report to MMS listing remaining lease term pipelines, including decommissioned pipelines on lease and indicate which pipelines remain as lease term (+1,500 hours).

When the rule becomes effective, the new collection will replace the current one for 30 CFR part 256.

On August 25, 2008 (73 FR 49943), we also updated cost recovery fees. Therefore, non-hour cost burdens have increased by \$55,450.

We estimate the total combined (30 CFR parts 250 and 256) annual burden and non-hour cost burdens for this proposed rule to be 19,499 burden hours and \$677,475 non-hour cost burdens. Therefore, the rule adds a net 2,396 burden hours and \$18,900 non-hour cost burdens to the already approved IC burdens. Except for the items identified as NEW in the following chart, the burden estimates shown are those that are estimated for the current 30 CFR part 256 regulations. The public has had numerous opportunities to comment on the current estimates during the process to renew the OMB approval of the IC requirements in current regulations.

The following table details the IC burden for the proposed rulemaking requirements.

| 30 CFR part 250, subpart Q | Reporting and recordkeeping requirements                    | Hour burden | Average number of annual responses | Annual burden hours |
|----------------------------|---|-------------|------------------------------------|---------------------|
| NEW 250.1717(e) .....      | NEW Submit expense information on plugging and abandonment. | 1 .....     | 520 responses .....                | 520                 |
| NEW 250.1729(d) .....      | NEW Submit expense information on platform removal.         | 1 .....     | 150 responses .....                | 150                 |
| NEW 250.1743(b)(8) .....   | NEW Submit expense information on site clearance.           | 1 .....     | 150 responses .....                | 150                 |
| Total .....                | .....   | .....       | 820 responses .....                | 820                 |
| Citation 30 CFR part 256 * | Reporting and recordkeeping requirements                    | Hour burden | Average number of annual responses | Annual burden hours |
| Non-Hour Cost Burdens      |   |             |                                    |                     |

**Subparts A and B**

|                                   |   |   |                  |   |
|-----------------------------------|---|---|------------------|---|
| Subpart A 256.104 .....           | Service Fees .....  | Fees covered individually throughout subpart. |                  | 0 |
| Subpart B: 201; 202; 203; 204 ... | Submit nominations, suggestions, and relevant information in response to request for comments on proposed 5-year leasing program, including information from States & local governments/industry/Federal agencies and others. | 4 .....                                       | 1 response ..... | 4 |
| Subtotal .....                    | .....   | .....   | 1 response ..... | 4 |

**Subpart C**

|                |  |         |                    |    |
|----------------|--|---------|--------------------|----|
| 300 .....      | Submit response to Calls for Information and Nominations on areas proposed for leasing in the 5-year program, including information from States/local governments. | 4 ..... | 1 response .....   | 4  |
| 304(a) .....   | States or local governments submit comments/recommendations on size, timing, or location of proposed lease sale.   | 4 ..... | 10 responses ..... | 40 |
| Subtotal ..... | .....  | .....   | 11 responses ..... | 44 |

**Subpart D**

|                       |  |   |                     |          |
|-----------------------|--|---|---------------------|----------|
| 400; 401 .....        | Establish company file for qualification; submit qualifications for lessee/bidder.   | 2 .....   | 104 responses ..... | 208      |
| NEW 402(a); 403 ..... | NEW Notify MMS if you or your principals are excluded, disqualified, or convicted of a crime—Federal non-procurement debarment and suspension system; request exception. | 1.5 .....   | 50 .....            | 75       |
| 404 .....             | Notify MMS of all mergers, name changes, or change of business.  | Requirement not considered IC under 5 CFR 1320.3(h)(1)  |                     | 0        |
| 410 .....             | Submit bids and required information .....   | 5 .....   | 2,000 bids .....    | 10,000   |
| 410(d); 417 .....     | Request reconsideration of bid decision .....  | Requirement not considered IC under 5 CFR 1320.3(h)(9). |                     | 0        |
| 411(a)(2); 412 .....  | File statement or detailed report of production  | 2 .....   | 100 responses ..... | 200      |
| 411(b) .....          | Submit appeal due to restricted joint bidders list.  | Requirement not considered IC under 5 CFR 1320.3(h)(9). |                     | 0        |
| 414 .....             | Request exemption from bidding restrictions; submit appropriate information.   | Requirement not considered IC under 5 CFR 1320.3(h)(9). |                     | 0        |
| 416(c) .....          | Notify MMS of tie bid decision; file agreement to accept joint lease on tie bids.  | 3.5 .....   | 2 agreements .....  | 7        |
| 420; 421 .....        | Execute lease (includes submission of evidence of authorized agent and request for dating of leases); submit supporting data.  | 1 .....   | 852 leases .....    | 852      |
| NEW 420(b) .....      | NEW Provide acceptable bond for payment of a deferred bonus. We do not expect this to occur, hence minimal burden.   | 15 mins. ....   | 1 response .....    | 15 mins. |

| Citation 30 CFR part 256 *                       | Reporting and recordkeeping requirements   | Hour burden  | Average number of annual responses    | Annual burden hours    |
|--|--|--------------|---------------------------------------|------------------------|
| Subtotal .....                                   | .....  | .....        | 3,109 responses .....                 | 11,342 (rounded) hours |
| <b>Subpart E</b>                                 |  |              |                                       |                        |
| 500(a); 501; 503; .....                          | Submit OCS Mineral Lessee's and Operator's Bond (Form MMS-2028), required information, and surety notifications.   | .25 .....    | 124 forms .....                       | 31                     |
| 501; 505; 510 .....                              | Demonstrate financial worth/ability to carry out present and future financial obligations, request approval of another form of security, or request reduction in amount of supplemental bond required.   | 3.5 .....    | 165 submissions .....                 | 578 (rounded)          |
| 502 .....  | Provide U.S. Treasury securities or other types of security instruments, including authority for MMS to sell securities, relevant information, and related or subsequent actions.  | 2 .....      | 10 submissions .....                  | 20                     |
| NEW 504 .....                                    | NEW Submit statement excluding payment obligations of co-lessee(s) or designated operator(s).  | 1 .....      | 1 exclusion statement ...             | 1                      |
| 510 .....  | Submit OCS Mineral Lessee's and Operator's Supplemental Plugging and Abandonment Bond (Form MMS-2028A) w/required information; upon request, demonstrate sufficiency; request reduction.   | .25 .....    | 136 forms .....                       | 34                     |
| 511 .....  | Provide third-party indemnity; financial information/statements; additional bond info; executed guarantor agreement and supporting information/documentation.  | 19 .....     | 45 submissions .....                  | 855                    |
| 511(c)(6); 522(b); 523 .....                     | Notify MMS and others, and request MMS approval to terminate period of liability or cancel bond or other form of security.   | 1/2 .....    | 378 requests .....                    | 189                    |
| 511(d); 520; 521; 522(b); 523(a)(2); .....       | Furnish replacement bond or provide alternate form of security. Burden included above with bond or alternate forms of security   |              |                                       | 0                      |
| 512 .....  | Request approval to withdraw funds from RUE/ROW decommissioning account.   | 12 .....     | 1 abandonment account                 | 12                     |
| 520 .....  | Notify MMS and others of bond lapse or action filed alleging lessee, surety, or guarantor is insolvent or bankrupt.  | 1 .....      | 3 notices .....                       | 3                      |
| 525(b) .....                                     | Provide information to demonstrate lease will be brought into compliance.  | 16 .....     | 5 responses .....                     | 80                     |
| Subtotal .....                                   | .....  | .....        | 868 responses .....                   | 1,803                  |
| <b>Subpart F</b>                                 |  |              |                                       |                        |
| Subparts E and F: 501; 601; 603                  | Request approval for various operations or submit plans or applications. Burden included with other approved collections for 30 CFR Part 250 (1010-0114/subpart A, 1010-0151/subpart B, 1010-0141/subpart D, 1010-0142/subpart Q, and 1010-0149/subpart I) |              |                                       | 0                      |
| Subpart F: 610; 611; 613(a); 614; 615; 617; 619. | File application and required information for assignment of record title interest (Form MMS-150) (includes sell, exchange, transfer); specify effective date.  | 1 hour ..... | 2,063 forms .....                     | 2,063                  |
|  |  |              | \$186 fee × 2,063 forms = \$383,718   |                        |
| 611; 612; 613(a); 614; 615; 617; 619.            | File application and required information for assignment of operating interest (Form MMS-151) (includes sell, exchange, transfer); specify effective date.   | 1 hour ..... | 937 forms .....                       | 937                    |
|  |  |              | \$186 fee × 937 forms = \$174,282     |                        |
| 620(a) .....                                     | File required instruments creating or transferring working interests, etc., for record purposes.   | 1 hour ..... | 700 filings .....                     | 700                    |
| NEW FEE .....                                    |  |              | NEW \$27 fee × 700 filings = \$18,900 |                        |



| Citation 30 CFR part 256 * | Reporting and recordkeeping requirements  | Hour burden   | Average number of annual responses   | Annual burden hours |
|----------------------------|---|---|--------------------------------------|---------------------|
| 620(b) .....               | Submit "non-required" documents, for record purposes that respondents want MMS to file with the lease document.   | Accepted on behalf of lessees as a service, MMS doesn't require/need. |                                      | 0                   |
|                            |   |   | \$27 fee × 3,725 filings = \$100,575 |                     |
| NEW 256.621 .....          | NEW After assignment of lease or new designation of operator, submit report to MMS listing remaining Lease Term P/Ls, including decommissioned P/Ls, on lease; indicate which P/Ls remain as Lease Term P/Ls. | 1 .....   | 1,500 L/T P/L listing reports.       | 1,500               |
| Subtotal .....             | .....   | .....   | 5,200 responses .....                | 5,200               |
|                            |   |   | \$677,475 non-hour cost burdens      |                     |
| <b>Subpart G</b>           |   |   |                                      |                     |
| 701; 902(a)(5) .....       | File Form MMS-152 to request relinquishment of lease.   | 1 .....   | 240 relinquishment forms.            | 240                 |
| 702 .....                  | Comment on lease cancellation (MMS expects 1 in 10 years).  | 1 .....   | 1 submission .....                   | 1                   |
| Subtotal .....             | .....   | .....   | 241 responses .....                  | 241                 |
| <b>Subpart I</b>           |   |   |                                      |                     |
| 902(a) .....               | Request a bonus or royalty credit and submit supporting documentation.  | 1 .....   | 30 .....                             | 30                  |
| 905 .....                  | Request approval to transfer bonus or credit to another party with supporting information.  | 1 .....   | 15 .....                             | 15                  |
| Subtotal .....             | .....   | .....   | 45 responses .....                   | 45                  |
| Total Burdens .....        | .....   | .....   | 10,295 Responses .....               | 19,499              |
|                            |   |   | \$677,475 Non-Hour Cost Burdens      |                     |

\*A few sections in 30 CFR part 260 also contain references to IC requirements in 30 CFR part 256 that are detailed in this table.

The MMS specifically solicits comments on the following questions:  
 (1) Is the IC useful and necessary for MMS to perform its functions properly?  
 (2) Are the estimates of the burden hours of the IC reasonable?  
 (3) Do you have any suggestions that would enhance the quality, clarity, or usefulness of the information to be collected?  
 (4) Is there a way to minimize the IC burden on those who respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology?  
 In addition, the PRA requires agencies to estimate the total annual reporting and recordkeeping non-hour cost burden resulting from the IC. With the exception of the two currently approved service fees—record title and/or operating rights (transfer), and non-required document filing fees—MMS has identified one new non-hour cost burden for \$27, filing required instruments creating or transferring working interests (see the burden table). This fee would only be a requirement if respondents want to submit documents for record purposes to file with the lease

document. We consider this a service to the respondent. We have identified no other non-hour paperwork cost burdens and we solicit your comments on this item. For reporting and recordkeeping only, your response should split the cost estimate into two components: (a) Total capital and start-up cost component and (b) annual operation, maintenance, and purchase of services component. Your estimates should consider the costs to generate, maintain, and disclose or provide the information. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and start-up costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, drilling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (1) Before October 1, 1995; (2) to comply with requirements not

associated with the IC; (3) for reasons other than to provide information or keep records for the Government; or (4) as part of customary and usual business or private practices.  
**National Environmental Policy Act**  
 This rule does not constitute a major Federal action significantly affecting the quality of the human environment. The MMS has analyzed this proposed rule under the criteria of the National Environmental Policy Act and 516 Departmental Manual 15. This proposed rule meets the criteria set forth in 516 Departmental Manual 2 (Appendix 1.10) for a Departmental "Categorical Exclusion" in that this proposed rule is " \* \* \* of an administrative, financial, legal, technical, or procedural nature and whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis \* \* \* ." This proposed rule also meets the criteria set forth in 516 Departmental Manual 15.4(C)(1) for an MMS "Categorical Exclusion" in that its impacts are limited to administration, economic or technological effects. Further, the MMS has analyzed this

proposed rule to determine if it meets any of the extraordinary circumstances that would require an environmental assessment or an environmental impact statement as set forth in 516 Departmental Manual 2.3, and Appendix 2. The MMS concluded that this rule does not meet any of the criteria for extraordinary circumstances as set forth in 516 Departmental Manual 2 (Appendix 2).

### Data Quality Act

In developing this proposed rule, we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106-554, app. C § 515, 114 Stat. 2763, 2763A-153-154).

### Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in E.O. 13211. A Statement of Energy Effects is not required.

### Clarity of This Regulation

We are required by E.O. 12866, E.O. 12988, and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

### Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

### List of Subjects

#### 30 CFR Part 250

Administrative practice and procedure, Continental shelf, Environmental impact statements, Environmental protection, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements.

#### 30 CFR Part 256

Administrative practice and procedure, Continental shelf, Environmental protection, Government contracts, Intergovernmental relations, Oil and gas exploration, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Surety bonds.

#### 30 CFR Part 260

Continental shelf, Government contracts, Mineral royalties, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements.

Dated: May 11, 2009.

#### Ned Farquhar,

*Acting Assistant Secretary—Land and Minerals Management.*

For the reasons stated in the preamble, MMS proposes to amend 30 CFR parts 250, 256, and 260 as follows:

### PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 250 continues to read as follows:

**Authority:** 31 U.S.C. 9701, 43 U.S.C. 1334.

2. Amend § 250.1717 by:

- (A) Revising paragraphs (c) and (d), and
- (B) Adding paragraph (e) to read as follows:

#### § 250.1717 After I permanently plug a well, what information must I submit?

\* \* \* \* \*

(c) Nature and quantities of material used in the plugs;

(d) If you cut and pull away any casing string, you must submit:

(1) A description of the methods used, including information on explosives used;

(2) Size and amount of casing removed; and

(3) Casing removed depth.

(e) Expenses of plugging and abandonment with supporting documentation.

3. Amend § 250.1729 by:

- (A) Revising paragraphs (b) and (c), and
- (B) Adding paragraph (d) to read as follows:

#### § 250.1729 After I remove a platform or other facility, what information must I submit?

\* \* \* \* \*

(b) A description of any mitigation measures you took;

(c) A statement signed by your authorized representative that certifies that the types and amount of explosives you used in removing the platform or other facility were consistent with those set forth in the approved removal application; and

(d) Expenses of removal of the platform or other approved decommissioning of the platform with supporting documentation.

3. Amend § 250.1743 by:

(A) Revising paragraphs (b)(6) and (b)(7), and

(B) Adding paragraph (b)(8) to read as follows:

#### § 250.1743 How do I certify that a site is clear of obstructions?

\* \* \* \* \*

(b) \* \* \*

(6) The results of the survey, including a list of any debris removed or a statement from the trawling contractor that no objects were recovered;

(7) A post-trawling job plot or map showing the trawled area; and

(8) Expenses of site clearance with supporting documentation.

4. Revise part 256 to read as follows:

### PART 256—LEASING OF SULPHUR OR OIL AND GAS AND BONDING REQUIREMENTS IN THE OUTER CONTINENTAL SHELF

#### Subpart A—General Provisions

Sec.

256.100 Information collection and proprietary information.

256.101 What are the consequences if I provide false information?

256.102 What does this part cover?

256.103 Definitions.

256.104 Service fees.

#### Subpart B—Oil and Gas 5-Year Leasing Program

256.200 What is the 5-year program?

256.201 Does MMS consult with interested parties while preparing the 5-year program?

256.202 How does MMS start the 5-year program preparation process?

256.203 What does MMS do before publishing a proposed program?

256.204 How do Governments and citizens comment on the proposed program?

256.205 What does MMS do before approving a final program or a significant revision?

256.206 Does MMS offer blocks in a sale that is not on the 5-year program schedule?

**Subpart C—Preparing for a Lease Sale**

- 256.300 What is a call for information?  
 256.301 What does MMS do with the information from the call?  
 256.302 What does MMS do if identified areas are within 3 miles of the seaward boundary of a coastal State?  
 256.303 What happens with an approved proposed notice of sale?  
 256.304 What role do affected States have?  
 256.305 What does MMS do with comments and recommendations received on the proposed notice?  
 256.306 How does MMS conduct a lease sale?

**Subpart D—Issuance of a Lease****Qualifications**

- 256.400 Who may become a lessee?  
 256.401 How do I show that I am qualified to be a lessee?  
 256.402 Who may not become a lessee or acquire an interest in a lease?  
 256.403 What do the non-procurement debarment rules require that I do?  
 256.404 When must I notify MMS of mergers, name changes, or changes of business form?

**How To Bid**

- 256.410 How do I submit a bid?

**Restrictions on Joint Bidding**

- 256.411 Are there restrictions on bidding with others and do they affect my ability to bid?  
 256.412 When must I file a statement of production?  
 256.413 How do I determine my production for purposes of the restricted joint bidders list?  
 256.414 Are exemptions from the bidding restrictions possible?

**How Does MMS Act on Bids?**

- 256.416 What does MMS do with my bid?  
 256.417 What may I do if my bid is rejected?

**Awarding the Lease**

- 256.420 What happens if I am the successful high bidder?  
 256.421 When is my lease effective?

**Subpart E—Financial Accountability and Risk Management****General Bonds**

- 256.500 What security must I provide when I obtain my lease?  
 256.501 Do my general bonding requirements change as activities progress on my lease?  
 256.502 What instruments other than a surety bond may I use to provide the required security?  
 256.503 What general requirements must my bond or other security meet?  
 256.504 Must my surety bond cover the payment obligations of my co-lessees and designated operators?  
 256.505 What happens if my co-lessees or designated operators exclude my payment obligations from their bond?

**Supplemental Bonds**

- 256.510 Can MMS require that I post a supplemental bond?  
 256.511 May I use a third-party guaranty to meet the supplemental bonding requirement?  
 256.512 May I use a lease, right-of-way (ROW), or right-of-use and easement (RUE)-specific decommissioning account to meet the supplemental bonding requirement?

**Changes in Bonding or Security**

- 256.520 What do I do if my bond lapses?  
 256.521 What happens if the value of my bond or other security is reduced?  
 256.522 What happens if my surety wants to terminate the period of liability of my bond?  
 256.523 What happens if my surety wants to cancel my bond?  
 256.524 Why might MMS call for forfeiture of my bond?  
 256.525 How will I know about this forfeiture?  
 256.526 What if correcting my default requires a change in the amount of my bond?

**Subpart F—Maintaining a Lease****Initial Period of a Lease**

- 256.600 What is the initial period of my oil and gas lease?  
 256.601 How may I maintain my oil and gas lease beyond the initial period?  
 256.602 What is the initial period of my sulphur lease?  
 256.603 How may I maintain my sulphur lease beyond the initial period?

**Lease Obligations**

- 256.605 What are my obligations as a record title holder?  
 256.606 What are my rights and obligations as an operating rights owner?

**Transferring Interest in All or Part of a Lease**

- 256.610 May I sell, exchange, assign, or otherwise transfer my lease?  
 256.611 May I assign all or part of my lease interest?  
 256.612 May I assign operating rights?  
 256.613 How do I seek approval of an assignment?  
 256.614 How do I transfer the interest of a deceased leaseholder?  
 256.615 What if I want to assign interests in more than one lease at the same time?  
 256.616 What is the effect of an assignment on an assignor's liability?  
 256.617 May I specify an effective date of the assignment?  
 256.618 What is the effect of an assignment on an assignee's liability?  
 256.619 As a restricted joint bidder, may I assign interest to another restricted joint bidder?  
 256.620 Are there any interests I may assign without MMS approval?  
 256.621 What reports must I submit for lease term pipelines when MMS approves a lease assignment?

**Helium**

- 256.630 What must a lessee do if MMS elects to extract helium from a lease?

**Subpart G—Ending a Lease**

- 256.700 How does a lease end?  
 256.701 May I end the lease myself?  
 256.702 Will MMS end my lease?

**Subpart H—[Reserved]****Subpart I—Bonus or Royalty Credits for Exchange of Certain Leases**

- 256.900 Which leases may I exchange for a bonus or royalty credit?  
 256.901 How much bonus or royalty credit will MMS grant in exchange for a lease?  
 256.902 What must I do to obtain a bonus or royalty credit?  
 256.903 How is the bonus or royalty credit allocated among multiple lease owners?  
 256.904 How may I use the bonus or royalty credit?  
 256.905 How do I transfer a bonus or royalty credit to another person?

**Authority:** 31 U.S.C. 9701, 42 U.S.C. 6213, 43 U.S.C. 1334, Pub. L. 109-432.

**Subpart A—General Provisions****§ 256.100 Information collection and proprietary information.**

(a) *Information collection (IC).* (1) The Office of Management and Budget (OMB) approved the collection of information under 44 U.S.C. 3501 *et seq.*, and assigned OMB Control Number 1010-xxxx. The title of this IC is 30 CFR part 256, Leasing of Sulphur or Oil and Gas and Bonding Requirements in the Outer Continental Shelf and 30 CFR part 260, Outer Continental Shelf Oil and Gas Leasing. The MMS collects the information to determine if applicants seeking to obtain a lease on the Outer Continental Shelf (OCS) are qualified to hold such a lease and can meet the monetary and non-monetary requirements of a lease. Responses to this collection are required to obtain or retain a benefit or are mandatory under 43 U.S.C. 1331 *et seq.* The MMS will protect proprietary information collected according to section 26 of the OCS Lands Act (OCSLA), 43 U.S.C. 1352, and this section.

(2) The Paperwork Reduction Act of 1995 requires us to inform the public that an agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

(3) Send comments regarding any aspect of the collection of information under this part, including suggestions for reducing the burden, to the IC Clearance Officer, Minerals Management Service, Mail Stop 5438, 1849 C Street, NW., Washington, DC 20240.

(b) *Proprietary information.* Specific indications of interest in an area by industry received in response to a Call

for Information issued by the Secretary is proprietary information.

(1) The MMS will handle requests for indications of interest in an area and any other proprietary or privileged information you submit, according to the regulations in 43 CFR part 2.

(2) Upon request, MMS will provide relative summary indications of interest in areas to a Call for Information for a proposed sale.

**§ 256.101 What are the consequences if I provide false information?**

Under 18 U.S.C. 1001, it is a crime to knowingly and willfully make any false, fictitious, or fraudulent statements or representations to any U.S. governmental entity regarding any matter within its jurisdiction.

**§ 256.102 What does this part cover?**

These regulations establish the procedures the Secretary of the Interior and MMS will use to administer a leasing program for minerals on the submerged lands of the OCS, under the OCSLA, 43 U.S.C. 1331 *et seq.*

**§ 256.103 Definitions.**

As used in this part, the term:

*Act* means the OCS Lands Act as amended (43 U.S.C. 1331 *et seq.*).

*Affected State* means, with respect to any program, plan, lease sale, or other activity, proposed, conducted, or approved pursuant to the provisions of the Act, any State:

(1) The laws of which are, pursuant to section 4(a)(2) of the Act, 43 U.S.C. 1333(a)(2), to be the law of the United States for the portion of the OCS on which such activity is, or is proposed to be, conducted;

(2) Which is, or is proposed to be, directly connected by transportation facilities to any artificial island or structure referred to in section 4(a)(1) of the Act, 43 U.S.C. 1333(a)(1);

(3) Which is receiving, or in accordance with the proposed activity will receive, oil for processing, refining, or transshipment which was extracted from the OCS and transported directly to such State by means of vessels or by a combination of means including vessels;

(4) Which is designated by the Secretary of the Interior as a State in which there is a substantial probability of significant impact on or damage to the coastal, marine, or human environment; or a State in which there will be significant changes in the social, governmental, or economic infrastructure, resulting from the exploration, development, and production of oil and gas anywhere on the OCS; or

(5) In which the Secretary of the Interior finds that because of such activity, there is, or would be, a significant risk of serious damage to the marine or coastal environment in the event of any oil spill, blowout, or release of oil or gas from vessels, pipelines, or other transshipment facilities due to factors such as prevailing winds and currents.

*Bidding Unit* means portions of two or more blocks combined for bidding purposes that may be bid upon as a single administrative unit and will become a single lease. The term tract, as defined in this section, may also be used.

*Bonus or royalty credit* means a legal instrument or other written documentation, or an entry in an account managed by the Secretary that a bidder or lessee may use in lieu of any other monetary payment for—

(1) A bonus due for a lease on the OCS; or

(2) A royalty due on oil or gas production from any lease located in the Gulf of Mexico.

*Central planning area* means the Central Gulf of Mexico Planning Area of the OCS, as designated in the document entitled, “Draft Proposed Program Outer Continental Shelf Oil and Gas Leasing Program 2007–2012,” dated February 2006.

*Coastal environment* means the physical, atmospheric, and biological components, conditions, and factors that interactively determine the state, condition, and quality of the terrestrial ecosystem from the shoreline inward to the boundaries of the coastal zone.

*Coastal zone* means the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the water therein and thereunder), strongly influenced by each other and in proximity to the shorelines of several coastal States, and includes islands, transition and intertidal areas, salt marshes, wetlands, and beaches, whose zone extends seaward to the outer limit of the U.S. territorial sea and extends inland from the shore lines to the extent necessary to control shorelands; the uses of which have a direct and significant impact on the coastal waters, and the inward boundaries of which may be identified by several coastal States, under section 305(b)(1) of the Coastal Zone Management Act (CZMA) of 1972, 16 U.S.C. 1454(b)(1).

*Coastline* means the line of ordinary low water along that portion of the coast in direct contact with the open sea and the line marking the seaward limit of inland waters.

*Desoto Canyon OPD* means the official protraction diagram designated as Desoto Canyon which has a western edge located at the universal transverse mercator (UTM) X coordinate 1,346,400 in the North American Datum of 1927 (NAD 27).

*Destin Dome OPD* means the official protraction diagram designated as Destin Dome which has a western edge located at the universal transverse mercator (UTM) X coordinate 1,393,920 in the NAD 27.

*Director* means the Director of MMS of the U.S. Department of the Interior, or an official authorized to act on the Director’s behalf.

*Eastern planning area* means the Eastern Gulf of Mexico Planning Area of the OCS, as designated in the document entitled “Draft Proposed Program Outer Continental Shelf Oil and Gas Leasing Program 2007–2012,” dated February 2006.

*General bond* means a bond with the amount fixed by regulations. The amount of the bond required is determined by the level of activity on the lease, right-of-way, or right-of-use and easement.

*Human environment* means the physical, social, and economic components, conditions, and factors that interactively determine the state, condition, and quality of living conditions, employment, and health of those affected, directly or indirectly, by activities occurring on the OCS.

*Marine environment* means the physical, atmospheric, and biological components, conditions, and factors which interactively determine the productivity, state, conditions, and quality of the marine ecosystem, including the waters of the high seas, the contiguous zone, transitional and intertidal areas, salt marshes, and wetlands within the coastal zone and on the OCS.

*Mineral* means oil, gas, and sulphur; it also includes sand, gravel, and salt used to facilitate the development and production of oil, gas, or sulphur.

*OCS* means the Outer Continental Shelf, as that term is defined in section 2(a) of the Act, 43 U.S.C. 1331(a).

*Pensacola OPD* means the official protraction diagram designated as Pensacola which has a western edge located at the universal transverse mercator (UTM) X coordinate 1,393,920 in the NAD 27.

*Person* means, in addition to a natural person, an association, a State, a political subdivision of a State, or a private, public, or municipal corporation.

*Secretary* means the Secretary of the Interior or a designated employee.

*Supplemental bond* means a bond required by MMS based upon potential lease decommissioning liabilities and/or other lease obligations that exceed the general bond.

*Tract* means an area of the OCS that is offered for sale as a single lease. The area may be a whole block, a portion of a block, or combined portions from multiple blocks. The term bidding unit, as defined previously, may also be used.

*We, us, and our* means the Minerals Management Service (MMS) of the Department of the Interior.

*You* means a lessee, the holder or owner of operating rights, a designated operator or agent of the lessee(s), a right of use and easement holder, State or Federal, and a pipeline right-of-way holder.

**§ 256.104 Service fees.**

(a) The table in this paragraph shows the fees that you must pay to MMS for

the services listed. The fees will be adjusted periodically according to the Implicit Price Deflator for Gross Domestic Product by publication of a document in the **Federal Register**. If a significant adjustment is needed to arrive at the new actual cost for any reason other than inflation, then a proposed rule containing the new fees will be published in the **Federal Register** for comment.

**SERVICE FEE TABLE**

| Service—processing of the following:   | Fee amount | 30 CFR citation |
|--|------------|-----------------|
| (1) Assignment of record title or operating rights (transfer) for MMS approval ..... | \$186      | § 256.613       |
| (2) Required document filing for record purpose, but not for MMS approval .....      | 27         | § 256.620(a)    |
| (3) Non-required document filing for record purposes .....                           | 27         | § 256.620(b)    |

(b) Payment of the fees listed in paragraph (a) of this section must accompany the submission of the document for approval or filing, or be sent to an office identified by the Regional Director. Once a fee is paid, it is nonrefundable, even if your service request is withdrawn. If your request is returned to you as incomplete, you are not required to submit a new fee with the amended submission.

**Subpart B—Oil and Gas 5-Year Leasing Program**

**§ 256.200 What is the 5-year program?**

Section 18(a) of the Act, 43 U.S.C. 1344(a), requires the Secretary to prepare an oil and gas leasing program that consists of a 5-year schedule of proposed lease sales to best meet national energy needs, showing the size, timing, and location of leasing activity as precisely as possible. The MMS prepares the schedule to obtain the proper balance between the potential for environmental damage, the potential for discovery of oil and gas, and the potential for adverse impact on the coastal zone.

**§ 256.201 Does MMS consult with interested parties while preparing the 5-year program?**

In preparing the 5-year program, MMS will consult with States and local governments, industry, and any other interested parties, primarily through public notice and comment procedures, as described in the sections that follow.

**§ 256.202 How does MMS start the 5-year program preparation process?**

To begin preparation of the 5-year leasing program, MMS invites and considers nominations for any areas to

be included or excluded from leasing, by doing the following:

(a) The MMS prepares and makes public, official protraction diagrams and leasing maps of OCS areas. Any area properly included on the official 5-year diagrams and maps may be offered for lease for any mineral not already leased.

(b) The MMS invites and considers any other suggestions and relevant information from Governors of affected States, local Governments, industry, Federal agencies, and other interested parties, through a publication of a request for information in the **Federal Register**. Local Governments must first submit their comments to their State Governor, before sending them to MMS.

(c) The MMS sends letters to the Governor of each affected State asking them to identify specific laws, goals, and policies that we should consider. We ask each State Governor as well as the Department of Commerce to identify the relationship between any oil and gas activity and the State coastal zone management program under sections 305 and 306 of the CZMA, 16 U.S.C. 1454 and 1455. The MMS will consider the coastal zone management program being developed or administered by an affected State under the CZMA.

(d) The MMS asks the Department of Energy for information on regional and national energy markets, OCS production goals, and transportation networks.

**§ 256.203 What does MMS do before publishing a proposed program?**

After considering the solicited comments and information described in § 256.202, we prepare a proposed leasing program.

(a) At least 60 days before publication of a proposed program, we send a draft

of the proposed program to the Governor of each affected State, who may solicit comments from local Governments that may be affected by the proposed program.

(b) The MMS replies in writing to any comment from a Governor that is received at least 15 days before submission of the proposed program to Congress and its publication for comment in the **Federal Register**.

**§ 256.204 How do Governments and citizens comment on the proposed program?**

The MMS publishes the proposed program in the **Federal Register** for comment by the public. At the same time, we send the proposed program to the Governors of the affected States and to Congress and the Attorney General for review and comment.

(a) Governors are responsible for providing a copy of the proposed program to affected local Governments in their State. Local Governments may comment directly to us, but must also send their comments to the Governor of their State.

(b) All comments from any party are due within 90 days after publication in the **Federal Register**.

**§ 256.205 What does MMS do before approving a final program or a significant revision?**

At least 60 days before approval, we submit a proposed final program or significant revision to the President and Congress. The MMS also submits any comments received and explains the reasons why we did not accept any specific recommendation of the Attorney General, or of a State or local Government.

**§ 256.206 Does MMS offer blocks in a sale that is not on the 5-year program schedule?**

(a) The MMS may offer blocks within a planning area included in the 5-year program in an otherwise unscheduled sale, if the block either:

- (1) Received a bid that was rejected in an earlier sale;
- (2) Had a high bid that was forfeited in a scheduled sale; or
- (3) Is a development block subject to drainage.

(b) For an unscheduled sale, we may disclose the classification of the block as a development block. However, blocks in the Central or Western Gulf of Mexico (GOM) planning areas cannot be offered in a sale that is not on the schedule.

**Subpart C—Preparing for a Lease Sale****§ 256.300 What is a call for information?**

The MMS issues a call for information on areas proposed for leasing in the 5-year program, through publication in the **Federal Register** and other publications as desired. A call may include more than one proposed sale. We request comments on:

- (a) Industry interest in the areas proposed for leasing;
- (b) Geological conditions, including bottom hazards;
- (c) Archaeological sites on the seabed or near shore;
- (d) Multiple uses of the proposed leasing area including navigation, recreation, and fisheries;
- (e) Other socioeconomic, biological, and environmental information; and
- (f) Industry's nominations or indications of interest in specific blocks within areas proposed for leasing in the 5-year program for each sale.

**§ 256.301 What does MMS do with the information from the call?**

In consultation with appropriate Federal agencies, we develop a proposal to recommend areas to the Secretary for further consideration for leasing and environmental analysis.

(a) The MMS considers all available environmental information, conflicts with other uses, resource potential, industry interest, and other relevant information, including comments received from State and local Governments and other interested parties in response to the call.

(b) The MMS evaluates the area identified for further consideration for the potential effects of leasing on the human, marine, and coastal environments, and to develop measures to mitigate adverse impacts for all the options to be analyzed. We inform the public of any additions or deletions from the area proposed for leasing in the

5-year program that result from the call process.

(c) The MMS prepares appropriate documentation under the National Environmental Policy Act (NEPA).

**§ 256.302 What does MMS do if identified areas are within 3 miles of the seaward boundary of a coastal State?**

For areas proposed for leasing that are within 3 geographical miles seaward of the seaward boundary of a coastal State, as defined in and governed by section 1337(g)(2) of the Act, we provide the Governor of the coastal State, pursuant to the confidentiality requirements in part 251 of this chapter, the following:

- (a) A schedule for leasing;
- (b) All geographical, geological, and ecological characteristics of the areas proposed for leasing;
- (c) An estimate of the oil and gas resources; and
- (d) An identification of any field, geological structure, or trap that lies within 3 miles of the State's seaward boundary.

**§ 256.303 What happens with an approved proposed notice of sale?**

The MMS sends an approved proposed notice of sale to the Governors of affected States and publishes the notice of its availability in the **Federal Register**. The notice includes appropriate stipulations and conditions to mitigate potential adverse impacts on the environment, the Director's findings, and all comments and recommendations received on the proposal.

**§ 256.304 What role do affected States have?**

(a) Within 60 days after receiving the proposed notice of sale, Governors of affected States may submit comments and recommendations to MMS regarding the size, timing, and location of the proposed sale. Local Governments may comment to us directly, but must also send their comments to the Governor of their State.

(b) The MMS will provide a consistency determination to affected States that will indicate whether the proposed sale is consistent, to the maximum extent practicable, with the enforceable policies of the applicable coastal zone management programs.

**§ 256.305 What does MMS do with comments and recommendations received on the proposed notice?**

The MMS considers all comments and recommendations received in response to the proposed notice of sale. We accept comments and recommendations from States and local Governments if we determine, after providing opportunity for consultation, that they provide for a

reasonable balance between the national interest and the well being of the citizens of the State or locality. We send to each Governor written reasons for rejecting or adopting alternatives on how to address that Governor's recommendations.

**§ 256.306 How does MMS conduct a lease sale?**

(a) The MMS publishes a final notice of sale in the **Federal Register** and in other publications, as appropriate, at least 30 days before the date of the sale. The notice:

- (1) States the place, time, and method for filing bids and the place, date, and hour for opening bids; and
- (2) Contains or references a description of the area offered for lease and any stipulations, terms, and conditions of the sale.

(b) Tracts are offered for lease by competitive sealed bid in accordance with the terms and conditions in the final notice of sale and applicable laws and regulations. Tracts comprise an area not exceeding 5,760 acres, unless we find that a larger area is necessary for reasonable economic production.

**Subpart D—Issuance of a Lease****Qualifications****§ 256.400 Who may become a lessee?**

You may become a lessee if you are:

- (a) A citizen or national of the U.S.;
- (b) An alien lawfully admitted for permanent residence in the U.S., as defined in 8 U.S.C. 1101(a)(20);
- (c) A private, public, or municipal corporation organized under the laws of any State of the U.S., the District of Columbia, or any territory or insular possession subject to U.S. jurisdiction;
- (d) An association of such citizens, nationals, resident aliens, or corporations;
- (e) A State; or
- (f) A political subdivision of States.

**§ 256.401 How do I show that I am qualified to be a lessee?**

(a) Provide your MMS qualification number if you have qualified with us, in which case you will not need to provide the information in paragraph (b) or (c) of this section, unless we require it.

(b) An individual must submit a written statement of citizenship status attesting to U.S. citizenship. It need not be notarized nor give the age of the individual. A resident alien must submit an original or a photocopy of the Immigration and Naturalization Service form evidencing legal status of the resident alien.

(c) A corporation, association, or other entity must submit evidence (refer to the

table in paragraph (d) of this section) acceptable to MMS that:

- (1) It is qualified to hold mineral leases under this subpart;
- (2) It is authorized to conduct business under the laws of its State;

(3) It is authorized to hold mineral leases in the OCS under the operating rules of its business; and

(4) The persons holding the titles listed are authorized to bind the

corporation or association when conducting business with us.

(d) Acceptable evidence under paragraph (c) of this section includes, but is not limited to:

| Requirements to qualify as a lessee to hold leases in the OCS:   | Corp. | Ltd. prtensp. | Gen. prtensp. | LLC   | Trust |
|--|-------|---------------|---------------|-------|-------|
| (1) Certified statement by Secretary, over corporate seal, certifying that the corporation is authorized to hold OCS leases .....  | XX    | .....         | .....         | ..... | ..... |
| (2) Evidence of authority of titled positions to bind corporation, certified by Secretary, over corporate seal, including the following: .....   | XX    | .....         | .....         | ..... | ..... |
| (i) Certified copy of resolution of the board of directors with titles of officers authorized to bind corporation.   |       |               |               |       |       |
| (ii) Certified copy of resolutions granting corporate officer authority to issue a power of attorney.  |       |               |               |       |       |
| (iii) Certified copy of power of attorney or certified copy of resolution granting power of attorney.  |       |               |               |       |       |
| (3) Certificate of partnership or organization paperwork registering with the appropriate State official .....   | ..... | XX            | XX            | XX    | ..... |
| (4) Copy of articles of partnership or organization evidencing filing with appropriate Secretary of State, certified by Secretary of partnership or is a member or manager of a LLC .....  | ..... | XX            | XX            | XX    | ..... |
| (5) Certificate evidencing State where partnership or LLC is registered. Statement of authority to hold OCS leases, certified by Secretary OR original paperwork registering with the appropriate State official .....               | ..... | XX            | XX            | XX    | ..... |
| (6) Statements from each partner or LLC member indicating the following: .....   | ..... | XX            | XX            | XX    | ..... |
| (i) If a corporation or partnership, statement of State of organization and authorization to hold OCS leases, certified by Secretary over corporate seal, if a corporation.  |       |               |               |       |       |
| (ii) If an individual, a statement of citizenship.   |       |               |               |       |       |
| (7) Statement from general partner, certified by Secretary that: .....   | ..... | XX            | .....         | ..... | ..... |
| (i) Each individual limited partner is a U.S. citizen and;   |       |               |               |       |       |
| (ii) Each corporate limited partner or other entity is incorporated or formed and organized under the laws of a U.S. State or territory.   |       |               |               |       |       |
| (8) Evidence of authority to bind partnership or LLC, if not specified in partnership agreement, articles of organization, or LLC regulations, i.e., certificates of authority from Secretary reflecting authority of officers ..... | ..... | XX            | XX            | XX    | ..... |
| (9) Listing of members of LLC certified by Secretary or any member or manager of LLC .....   | ..... | .....         | .....         | XX    | ..... |
| (10) Copy of trust agreement or document establishing the trust and all amendments, properly certified by the trustee with reference to where the original documents are filed .....   | ..... | .....         | .....         | ..... | XX    |
| (11) Statement indicating the law under which the trust is established and that the trust is authorized to hold OCS leases .....   | ..... | .....         | .....         | ..... | XX    |

**§ 256.402 Who may not become a lessee or acquire an interest in a lease?**

You may not become a lessee or acquire an interest in a lease if:

(a) You or your principals are excluded or disqualified from participating in transactions covered by the Federal non-procurement debarment and suspension system (2 CFR parts 180 and 1400), unless MMS explicitly has approved an exception for this transaction;

(b) You or your principals fail to meet or exercise due diligence under section 8(d) of the Act, 43 U.S.C. 1337(d) on any other OCS lease; or

(c) The MMS determines after notice and opportunity for a hearing under 30 CFR part 290, subpart A, that your operating performance is unacceptable

under 30 CFR part 250 on any other OCS lease.

**§ 256.403 What do the non-procurement debarment rules require that I do?**

You must comply with the Department of the Interior's non-procurement debarment regulations at 2 CFR parts 180 and 1400.

(a) You must notify MMS if you know that you or your principals are excluded, disqualified, or convicted of crime as described in 2 CFR part 180 subpart I. You must make this notification before you sign a lease, assignment of record title interest, or transfer (assignment) of operating rights interest; or become a lease or unit operator. This paragraph does not apply if you have previously provided a statement disclosing this information,

and we have received an exception from the Department of the Interior as described in 2 CFR 180.135.

(b) If you wish to enter into a covered transaction with another person at the next lower tier, you must first:

(1) Verify that the person is not excluded or disqualified under the requirements in 2 CFR part 180; and

(2) Require the person to:  
 (i) Comply with this subpart; and  
 (ii) Include the obligation to comply with this subpart in their contracts and other transactions.

(c) After you enter into a covered transaction, you must immediately notify MMS in writing if you learn that:

- (1) You failed to disclose information earlier; or
- (2) Due to changed circumstances, you or your principals now meet any of the criteria in 2 CFR 180.800.

**§ 256.404 When must I notify MMS of mergers, name changes, or changes of business form?**

You must immediately notify us of any merger, name change, or change of business form. The latest you may make this notification is 1 year after the earliest effective date or the date of filing the change or action with the Secretary of the State or other authorized official in the State of original registry.

**How to Bid**

**§ 256.410 How do I submit a bid?**

(a) You must submit a separate sealed bid for each tract or bidding unit to the address provided and by the time specified in the notice of sale. You may not bid on less than an entire tract or bidding unit.

(b) You must include a deposit to cover all bids submitted. The notice of sale specifies the amount and method of payment.

(c) You may not submit a bid on an OCS lease if, after notice and hearing under 30 CFR part 290, the Secretary finds that you are not meeting the diligence requirements on any other OCS lease.

(d) If your high bid is rejected, then the decision of the authorized officer on bids must be the final decision of the Department, subject only to reconsideration by the Secretary, upon your written request as set out in § 256.417.

**Restrictions on Joint Bidding**

**§ 256.411 Are there restrictions on bidding with others and do they affect my ability to bid?**

The Energy Policy and Conservation Act of 1975, 42 U.S.C. 6213, prohibits joint bidding by major oil and gas producers under the following circumstances:

(a) The MMS publishes a restricted joint bidders list twice yearly in the **Federal Register**. Persons appearing on this list are limited in their ability to submit joint bids (see paragraph (c) of this section). The list:

(1) Consists of the persons chargeable with an average worldwide daily production in excess of 1.6 million barrels of crude oil, liquefied petroleum products, or the Btu equivalent in natural gas, for the prior production period; and

(2) Is based upon the statement of production that you must file as required by § 256.412.

(b) If we place you on the restricted joint bidders list, we will send you a copy of the order placing you on the list. You may appeal this order to the

Interior Board of Land Appeals under 30 CFR part 290, subpart A.

(c) If you are listed in the **Federal Register** in any group of restricted bidders, you may not bid:

(1) Jointly with another person in any other group of restricted bidders for the applicable 6-month bidding period; or

(2) Separately during the 6-month bidding period if you have an agreement with another restricted bidder that would result in joint ownership in an OCS lease.

(d) As a bidder, you are prohibited from unlawful combination with, or intimidation of, bidders under 18 U.S.C. 1860.

**§ 256.412 When must I file a statement of production?**

(a) You must file a statement of production if you had an average worldwide daily production of over 1.6 million barrels for the prior production period (determine your production using the method in § 256.413). Your statement must specify that you were chargeable with an average daily production in excess of 1.6 million barrels for the prior production period.

(b) The prior production periods are as follows:

|                                 |  |
|---------------------------------|--|
| For the bidding period of . . . | The prior production period is the preceding . . . |
| (1) May through October,        | July through December.                             |
| (2) November through April,     | January through June.                              |

(c) You must file the statement of production by the following deadlines:

|                                 |                                      |
|---------------------------------|--------------------------------------|
| For the bidding period of . . . | You must file the statement by . . . |
| (1) May through October,        | March 17.                            |
| (2) November through April,     | September 17.                        |

(d) If you file a statement of production, MMS may require you to submit a detailed report of production.

(1) The detailed report must list crude oil, liquefied petroleum products, or Btu equivalent in natural gas chargeable for the prior production period.

(2) You must submit this report within 30 days after receiving the MMS request.

(3) The MMS may inspect and copy such documents, records of production, analyses, and other material to verify the accuracy of any earlier statements of production.

(e) If you submit a statement of production that misrepresents your chargeable production, we may cancel

any of your leases that were awarded in reliance upon such statement.

**§ 256.413 How do I determine my production for purposes of the restricted joint bidders list?**

(a) To determine the amount of production chargeable to you, add together:

(1) Your average daily production in barrels of crude oil, liquefied petroleum products, or the Btu equivalent in natural gas worldwide; and

(2) Your proportionate share of the average daily production owned by any entity which has an interest in you as the reporting person, and in which you have an interest.

(b) For the purpose of this section, *average daily production* includes production owned by:

- (1) You;
- (2) Every subsidiary of yours;
- (3) Every person of which you are a subsidiary; and
- (4) Every subsidiary of any person of which you are a subsidiary.

(c) For purposes of this section, *interest* means at least 5 percent ownership or control of you or the reporting person and includes any interest:

- (1) From ownership of securities or other evidence of ownership; or
- (2) By participation in any contract, agreement, or understanding regarding control of the person or their production of crude oil, liquefied petroleum products, or the Btu equivalent in natural gas.

(d) For purposes of this section, *entity* means a person that meets both of the following criteria:

(1) The entity is, in addition to a natural person, a corporation, partnership, association, joint-stock company, trust, fund, or any receiver, trustee in bankruptcy, or similar official acting for such a company; and

(2) Fifty (50) percent or more of the entity's stock or other interest having power to vote for the election of a controlling body, such as directors or trustees, is directly or indirectly owned, controlled, or held with the power to vote by another person.

**§ 256.414 Are exemptions from the bidding restrictions possible?**

The MMS may exempt you from the bidding restrictions if, after an opportunity for a hearing, we find that extremely high costs in an area would preclude exploration and development without an exemption.

**How Does MMS Act on Bids?**

**§ 256.416 What does MMS do with my bid?**

(a) The MMS opens the sealed bids at the place, date, and hour specified in



the notice of sale for the sole purpose of publicly announcing and recording the bids. We do not accept or reject any bids at that time.

(b) The MMS accepts or rejects all bids within 90 days, although we may extend that time if necessary. We reserve the right to reject any and all bids, regardless of the amount offered. If your bid is rejected, we will refund any money deposited with your bid plus any interest accrued.

(c) If the highest bids are tied, MMS will notify the tied bidders. Within 15 days after notification, the tied bidders may agree to accept the lease jointly, if not otherwise prohibited from bidding together. The tied bidders must notify MMS of their decision and submit a copy of their agreement to accept the lease jointly. Or, they may decide between themselves which bidder(s) will become the lessee, and notify MMS of their decision. If there is no such agreement, we will award the lease to the high bidder selected by lot.

(d) The MMS offers the Attorney General the opportunity to review the results of the sale before we accept the bids and issue the leases.

**§ 256.417 What may I do if my bid is rejected?**

You may ask MMS in writing for reconsideration within 15 days of bid rejection. You will receive a written response either affirming or reversing the rejection.

**Awarding the Lease**

**§ 256.420 What happens if I am the successful high bidder?**

If you are the successful bidder, you will receive the appropriate number of copies of the lease on a form approved by MMS.

(a) When you receive the lease copies, within 11-business days after receipt, you must:

- (1) Execute the lease;
- (2) Pay the first year's rental;
- (3) Pay the balance of the bonus, unless deferred under (b) below; and
- (4) File a bond under subpart E of this part.

(b) If provided for in the notice of sale, we may defer any part of the bonus payment for up to 5 years after the sale according to a schedule included in the notice of sale. You must provide a bond acceptable to us for payment of a deferred bonus.

(c) If you do not execute and return the lease within 11 business days after receipt, or if you otherwise fail to comply with applicable regulations, your deposit will be forfeited and MMS may take appropriate action to collect the full amount bid, if so provided for in the notice of sale. However, we will return any deposit with interest if the tract is withdrawn from leasing before you execute the lease.

(d) If you use an agent to execute the lease, you must include evidence with the executed copies of the lease form that you authorized the agent to act for you. After you comply with all requirements in this section, and after we have executed the lease, we will send you an executed copy.

**§ 256.421 When is my lease effective?**

Your lease is effective on the first day of the month following the date that MMS executes the lease. You may request in writing, before we execute the lease, that your lease be effective as of the first day of the month in which we execute it.

**Subpart E—Financial Accountability and Risk Management**

**General Bonds**

**§ 256.500 What security must I provide when I obtain my lease?**

(a) Before MMS will issue your lease or approve an assignment of an existing

lease, you must provide one of the following general bonds on Form MMS-2028:

- (1) A lease-specific \$50,000 general bond that guarantees compliance with all terms and conditions of the lease; or
- (2) An area-wide \$300,000 general bond that guarantees compliance with all terms and conditions of all your leases in the area where your lease is located; or
- (3) A lease-specific or area-wide general bond as required for exploration or development and production activities as specified in § 256.501.

(b) For the purpose of an area-wide bond, the areas are each planning area as administered by MMS.

(c) You have met the bonding requirement under this section if your designated lease operator provides a lease-specific or area-wide general bond that guarantees compliance with all terms and conditions of the lease, as required under § 256.501.

(d) The MMS may adjust the dollar amount of the general bonds described in this section by using the Implicit Price Deflator for Gross Domestic Product or a substantially equivalent index.

**§ 256.501 Do my general bonding requirements change as activities progress on my lease?**

The table in this paragraph contains the general bond requirements for each stage of activity on your lease. Each bond must guarantee compliance with all terms and conditions of the lease. You may satisfy these bond requirements with a new bond or by increasing the amount of your existing bonds required under § 256.500.

| Stage of activity                              | Amount of general bond | Deadline for submission  | Exceptions   |
|--|------------------------|--|--|
| (a) Before lease exploration activities begin. | \$200,000              | Earlier of either of the following: The date you submit an Exploration Plan (EP) for approval; or the date you, as an assignee, submit a request for approval of assignment of a lease with an approved EP | The Regional Director may authorize you to submit the \$200,000 bond after you submit an EP, but before we approve drilling activities under the EP. You need not submit and maintain a \$200,000 lease exploration bond if you furnish and maintain either:<br>(1) A \$1 million area-wide bond issued by a certified surety and conditioned on compliance with all the terms and conditions of all leases in the area; or<br>(2) A \$3 million area-wide bond under paragraph (b) of this table. |

| Stage of activity   | Amount of general bond | Deadline for submission   | Exceptions  |
|---|------------------------|---|---|
| (b) Before lease development and production activities begin. | \$500,000              | Earlier of either of the following: The date you submit a Development and Production Plan (DPP) or Development Operations Coordination Document (DOCD) for approval; or the date you, as an assignee, submit a request for approval of assignment of a lease with an approved DPP or DOCD | The Regional Director may authorize you to submit the \$500,000 lease development bond after you submit a DPP or DOCD, but before we approve the installation of a platform or the commencement of drilling activities under the DPP or DOCD. You need not submit and maintain a \$500,000 lease development bond if you furnish and maintain a \$3 million area-wide bond that is issued by a certified surety and conditioned on compliance with all the terms and conditions of all leases in the area. We may accept a bond of less than \$500,000 if:<br>(1) You can demonstrate that wells and platforms can be abandoned and removed and drilling and platform sites cleared of obstructions for less than \$500,000; and<br>(2) The bond is at least equal to the cost of well abandonment, platform removal, and site clearance. |

**§ 256.502 What instruments other than a surety bond may I use to provide the required security?**

You may pledge U.S. Department of Treasury securities or other types of security instruments if MMS determines that such security protects us to the same extent as the required bond. If you use a Treasury security:

(a) You must post 115 percent of your bonding amount.

(b) You must daily monitor the collateral value of your security. If the collateral value of your security, as determined in accordance with the 31 CFR part 225 Collateral Margins Table (which can be found at <http://www.treasurydirect.gov>) falls below the required level of coverage, you must within 10-business days, pledge additional security to provide the required amount.

(c) You must include with your pledge, authority for us to sell the security and use the proceeds if we determine that you have failed to comply with any of the terms and conditions of your lease, right-of-way (ROW), or right-of-use and easement (RUE), any subsequent approval or authorization, or applicable regulations.

**§ 256.503 What general requirements must my bond or other security meet?**

(a) Any bond or other security that you provide must:

(1) Be payable to MMS upon demand;  
 (2) Guarantee compliance under the lease and regulations of all of your non-monetary obligations and those of all lessees, operating rights owners, and operators on the lease; and  
 (3) Guarantee all of your monetary obligations.

(b) All surety bonds and Treasury notes must be on an official form

approved by MMS. You may submit a bond on an approved form that you have reproduced. If the document you submit either advertently or inadvertently omits any terms and conditions that are included on the approved form, your bond is deemed to contain the omitted terms and conditions of the official form.

(c) The MMS reserves the right to require electronic filing with a 90-day notice published in the **Federal Register**.

(d) Surety bonds must be issued by a surety that the Treasury certifies as acceptable to provide bonds to Federal agencies by listing in the current Treasury Circular 570, as required by 31 CFR 223.16. You may obtain a copy of Circular 570 from the Treasury Web site at <http://www.fms.treas.gov>.

(e) You and a certified surety must execute your bond. When the surety is a corporation, an authorized corporate officer must sign the bond and attest to it over the corporate seal, and include the power of attorney authorizing said officer to bind the security.

(f) You may not terminate the period of liability of, or cancel your bond, except as provided in this subpart. Bonds must continue in full force and effect even though an event has occurred that could diminish, terminate, or cancel a surety's obligation under State law.

**§ 256.504 Must my surety bond cover the payment obligations of my co-lessees and designated operators?**

You may exclude from coverage the payment obligations of a co-lessee or designated operator from your bond by giving MMS a written statement specifying which co-lessees and designated operators are to be excluded.

The exclusion of payment obligations from coverage does not exclude the non-payment obligations of the lease.

**§ 256.505 What happens if my co-lessees or designated operators exclude my payment obligations from their bond?**

You must post a bond at the level specified in this subpart for the level of activity on the lease. We may require a lesser amount if you can demonstrate that your payment obligations are less than the bond amounts required.

**Supplemental Bonds**

**§ 256.510 Can MMS require that I post a supplemental bond?**

(a) To ensure coverage of potential lease, ROW, or RUE decommissioning liabilities and/or other obligations, MMS may determine that you need to provide a supplemental bond as security in addition to the requirements under §§ 256.500 and 256.501 for general bonds. The Regional Director may require you to demonstrate the sufficiency of your bond to accomplish your lease obligations. You must submit supplemental bonds on Form MMS-2028A.

(b) A requirement to post a supplemental bond(s) will be based on the Regional Director's determination of the cost to meet all accrued and anticipated obligations of your lease(s), ROW(s), or RUE(s), including those arising from operating rights interests, and an evaluation of the probability that you will be able to carry out present and future financial obligations as demonstrated by:

(1) Financial capacity substantially in excess of existing and anticipated lease and other obligations, as evidenced by audited financial statements (including

auditor's certificate, balance sheet, and profit and loss sheet);

(2) Projected financial strength significantly in excess of existing and future lease and other obligations based on the estimated value of your existing OCS lease production;

(3) Business stability based on 5 years of continuous operation and production of oil and gas or sulphur in the OCS or onshore;

(4) Reliability in meeting obligations based on credit ratings or trade references, including names and addresses of other lessees, drilling contractors, and suppliers with whom you have dealt; and

(5) A record of compliance with laws, regulations, and lease, ROW, or RUE terms.

(c) The MMS determines the amount of supplemental bond required to guarantee compliance. The Regional Director performs a case-specific analysis and considers such items as the potential underpayment of royalties; the cumulative obligations to abandon wells and remove platforms and facilities; and the requirement to clear the seafloor of obstructions.

(d) If your cumulative potential obligations and liabilities increase or decrease, MMS may adjust the amount of the supplemental bond required.

(1) The MMS will notify you of any proposed adjustment to your bond amount and give you an opportunity to comment.

(2) If you request a reduction, you must submit evidence to the Regional

Director that the projected amount of royalties due the Government over the next 12 months, any past due royalties, other payment obligations, and the estimated costs of your required decommissioning and cleanup, are less than the required bond amount. If MMS agrees, we will reduce the amount of the supplemental bond required.

(e) Your supplemental bond must meet the requirements specified for general bonds under § 256.503. You may utilize U.S. Department of the Treasury securities or other types of security instruments that MMS determines protect us to the same extent as the required bond. If you use a Treasury security, you must meet the requirements specified for general bonds in § 256.502.

**§ 256.511 May I use a third-party guaranty to meet the supplemental bonding requirement?**

(a) You may use a third-party guaranty if the guarantor meets the criteria prescribed in paragraph (b) of this section and submits an agreement meeting the criteria prescribed in paragraph (c) of this section. The agreement must guarantee compliance with the obligations of all lessees, operating rights owners, and operators on the lease(s), ROW(s), and RUE(s).

(b) The MMS will consider the following factors in deciding whether to accept an agreement:

(1) The length of time that your guarantor has been in continuous operation as a business entity. You may

exclude periods of interruption that are beyond the guarantor's control by demonstrating, to the satisfaction of the Regional Director, that the interruptions do not affect the likelihood of your guarantor remaining in business during exploration, development, production, and decommissioning operations on your lease(s), ROW(s), and RUE(s) covered by the indemnity agreement.

(2) Financial information available in the public record or submitted by your guarantor in sufficient detail to show us that your guarantor meets the criteria stated in paragraph (b)(4) of this section. Such detail includes:

(i) The current rating for its most recent bond issuance by a generally recognized bond rating service such as Moody's Investor Service or Standard and Poor's Corporation;

(ii) Your guarantor's net worth, taking into account liabilities for compliance with all terms and conditions of your lease, regulations, and other guarantees;

(iii) Your guarantor's ratio of current assets to current liabilities, taking into account liabilities for compliance with all terms and conditions of your lease, regulations, and other guarantees; and

(iv) Your guarantor's unencumbered domestic fixed assets.

(3) If the information in paragraph (b)(2) of this section is not publicly available, your guarantor must submit the information in the following table, to be updated annually within 90 days of the end of the fiscal year (FY) or as otherwise prescribed.

| Your guarantor must submit . . .   | That . . .   |
|--|--|
| (i) Financial statements for the most recently completed FY                          | Include a report by an independent certified public accountant containing the accountant's audit or review opinion of the statements. The report must be prepared in conformance with generally accepted accounting principles and contain no adverse opinion. |
| (ii) Financial statement for completed quarter in the current FY                     | Your guarantor's financial officer certifies to be correct.  |
| (iii) Additional information related to bonds, if requested by the Regional Director | Your guarantor's financial officer certifies to be correct.  |

(4) Your guarantor's total outstanding and proposed guarantees must not exceed 25 percent of its unencumbered domestic net worth.

(c) Your guarantor must submit an agreement executed by the guarantor and all parties bound by the agreement. All parties are bound jointly and severally and must meet the qualifications set forth in §§ 256.400 and 256.401.

(1) When any party is a corporation, two corporate officers authorized to execute the indemnity agreement on behalf of the corporation must sign the agreement.

(2) When any party is a partnership, joint venture, or syndicate, the indemnity agreement must bind each party who has a beneficial interest in your guarantor and provide that, upon MMS demand under your guaranty, each party is jointly and severally liable for compliance with all terms and conditions of your lease(s), ROW(s), and RUE(s) covered by the agreement.

(3) When forfeiture of the guaranty is called for, the agreement must provide that your guarantor will either bring your lease(s), ROW(s), and RUE(s) into compliance or provide, within 7-calendar days, sufficient funds to permit MMS to complete corrective action.

(4) The guaranty agreement must contain a confession of judgment, providing that, if we determine that you are, or your operator or operating rights owner is, in default, the guarantor must not challenge the determination and must remedy the default.

(5) If you fail, or your operator or operating rights owner fails, to comply with any law, term, or regulation, your guarantor must either take corrective action or provide, within 7-calendar days or other agreed upon time period, sufficient funds for MMS to complete corrective action. Such compliance must not reduce your guarantor's liability.

(6) If your guarantor wants to terminate the period of liability, your guarantor must notify you and us at least 90 days before the proposed termination date, obtain our approval for termination of all or a specified portion of the guarantee for liabilities arising after that date, and remain liable for all your work performed during the period the agreement is in effect.

(7) Each guaranty submitted pursuant to this section is deemed to contain all the above terms, even if they are not actually in the agreement.

(d) If your guaranty is to be terminated, you must provide an acceptable replacement in the form of a bond or other security before the termination.

**§ 256.512 May I use a lease, right-of-way (ROW), or right-of-use and easement (RUE)-specific decommissioning account to meet the supplemental bonding requirement?**

(a) The MMS may authorize you to establish a lease, ROW, or RUE-specific decommissioning account in a Federally-insured institution in lieu of a supplemental bond. The funds must not be withdrawn from the account without written approval by MMS.

(1) The funds must be payable to MMS and pledged to meet your decommissioning obligations.

(2) You must fully fund the account to cover all costs of decommissioning, including site clearance within the time we prescribe. The MMS will estimate the cost of decommissioning and site clearance.

(b) Any interest paid on the account will be treated as account funds unless MMS authorizes in writing that any interest be paid to the depositor.

(c) The Regional Director may allow you to pledge Treasury securities payable to MMS on demand to satisfy your obligation to make payments into the account. Acceptable Treasury securities and their collateral value are defined in 31 CFR part 380.

(d) The MMS may require you to create an overriding royalty or

production payment obligation for the benefit of the account. The obligation may be associated with production from another lease.

**Changes in Bonding or Security**

**§ 256.520 What do I do if my bond lapses?**

(a) If your surety is decertified by the Treasury, becomes bankrupt or insolvent, or if your surety's charter or license is suspended or revoked, you must provide alternate security immediately. You must promptly inform MMS about the bond lapse and provide a new bond to us in the amount required under this subpart.

(b) You and your surety must notify MMS within 72 hours after you learn of any action filed alleging that you are, or your surety or guarantor is, insolvent or bankrupt, or has been decertified by the U.S. Treasury.

**§ 256.521 What happens if the value of my bond or other security is reduced?**

If the value of your bond or other security is reduced because of a default or any other reason, you must provide additional bond coverage sufficient to meet the requirements of this subpart within 45 days; however, MMS may specify a shorter period of time.

**§ 256.522 What happens if my surety wants to terminate the period of liability of my bond?**

(a) Terminating the period of liability of a bond ends the period during which obligations continue to accrue, but does not relieve the surety of the responsibility for obligations and liabilities that accrued during the period of liability and before the date on which MMS terminates the period of liability under paragraph (b) of this section. The liabilities that accrue during a period of liability include:

(1) Obligations that started to accrue prior to the beginning of the period of liability and had not been met, and

(2) Obligations that began accruing during the period of liability.

(b) Your surety must submit its request to MMS to terminate the period of liability under its bond and notify you of that request. We will terminate that period of liability within 90 days after we receive the request. If you intend to continue operations, or have not met all end-of-lease obligations, we will require you to provide a replacement bond of equivalent value.

(c) If the period of liability is terminated but the bond is not cancelled under § 256.523, the surety that provided the bond must continue to be liable for accrued obligations until all obligations are satisfied.

**§ 256.523 What happens if my surety wants to cancel my bond?**

(a) The MMS will cancel or release a bond and relieve the surety from accrued obligations only if:

(1) The MMS determines that there are no outstanding obligations; or

(2) You furnish a replacement bond or an alternative form of security in an amount equal to or greater than the bond to be cancelled to cover the terminated period of liability and:

(i) Before MMS will cancel a general bond prescribed under §§ 256.500 or 256.501 on the basis of a replacement bond, the surety issuing the new bond must expressly agree to assume all outstanding liabilities that accrued during the period of liability that was terminated.

(ii) Before MMS will cancel a supplemental bond on the basis of a replacement bond, the surety issuing the new bond must agree to assume that portion of the outstanding liabilities that accrued during the terminated period of liability that exceeds the coverage of the bond prescribed under §§ 256.500 or 256.501 and of which you were notified.

(b) When your lease ends, your surety(s) remain(s) responsible and MMS will retain any pledged security as shown in the table below:

| Bond type:   | The period of liability ends:  | Your bond will be cancelled:  |
|--|--|---|
| (1) General bonds submitted under §§ 256.500 or 256.501. | When MMS determines that you have met all of your obligations under the lease.               | Seven years after the lease ends, 6 years after completion of all bonded obligations, or at the conclusion of any appeals or litigation related to your bonded obligation, whichever is the latest. The MMS will reduce the amount of your bond or return a portion of your security, if we determine that you need less than the full amount of the bond to meet any possible future obligations.                                  |
| (2) Supplemental bonds submitted under this subpart.     | When MMS determines that you have met all your obligations covered by the supplemental bond. | When you meet your bonded obligations, unless MMS:<br>(i) Determines that the future potential liability resulting from any undetected obligations is greater than the amount of the base bond; and<br>(ii) Notifies the provider of the bond that we will wait 7 years before canceling all or a part of the bond, or a longer period as necessary to complete any appeals or judicial litigation related to your bond obligation. |

**§ 256.524 Why might MMS call for forfeiture of my bond?**

(a) The MMS may call for forfeiture of all or part of the bond or pledged security or performance by your guarantor if:

(1) After notice and demand for performance by MMS, you refuse or fail, within the timeframe we prescribe, to comply with any term or condition of your lease; or

(2) You default on one of the conditions under which we accepted your bond.

(b) The MMS may pursue forfeiture without first making demands for performance against any other lessee, operating rights owner, or other person approved to perform lease obligations.

**§ 256.525 How will I know about this forfeiture?**

(a) The MMS will notify you and your surety or guarantor in writing of the call for forfeiture and provide the reasons for the forfeiture and the amount to be forfeited. We will base the amount upon our estimate of the total cost of corrective action to bring your lease into compliance.

(b) The MMS would advise you, your guarantor, and any surety that you may avoid forfeiture if, within 5 business days:

(1) You, or your guarantor, agree(s) to and demonstrate(s) that you will bring your lease into compliance within the timeframe we prescribe; or

(2) Your surety agrees to, and demonstrates that, it will bring your lease into compliance within the timeframe we prescribe, even if the cost of compliance exceeds the face amount of the bond.

**§ 256.526 What if correcting my default requires a change in the amount of my bond?**

(a) If MMS demands forfeiture of your bond, we will collect the forfeited amount and use the funds to bring your lease(s) into compliance and correct any default.

(b) If the amount collected under your bond is insufficient to pay the full cost of corrective action, MMS may take or direct action to obtain full compliance and recover all costs in excess of the forfeited bond from you, any co-lessee, operating rights owner, or responsible guarantor.

(c) If the amount collected under your bond exceeds the full cost of corrective action to bring your lease(s) into compliance, MMS will return the excess funds to the party from whom they were collected.

**Subpart F—Maintaining a Lease****Initial Period of a Lease****§ 256.600 What is the initial period of my oil and gas lease?**

(a) The initial period of your oil and gas lease may range from 5 to 10 years. The MMS will specify the initial period in the notice of sale and in the lease instrument.

(b) For leases in water depths of 400 to 799 meters, unless otherwise provided for in the notice of sale, the initial period will be 8 years but you must begin an exploratory well within the first 5 years. Your lease will be subject to administrative cancellation after 5 years if you have not begun an exploratory well.

**§ 256.601 How may I maintain my oil and gas lease beyond the initial period?**

(a) You may maintain your oil and gas lease beyond the initial period as long as you are producing oil or gas in paying quantities, you are granted a suspension, or you are conducting approved drilling or well reworking operations, in accordance with 30 CFR part 250.

(b) You may maintain your oil and gas lease by producing from, or drilling or reworking approved directional wells under your lease that originates from the surface of the seabed adjacent to or adjoining your lease.

(c) You may maintain your oil and gas lease if your lease is being drained by a well on another lease and you are paying compensatory royalty.

(d) You may maintain your oil and gas lease if the lease, or part of the lease, is part of an MMS-approved unit agreement, and there either is production allocated to your lease, a suspension of unit operations, or the unit is conducting approved drilling or well-reworking operations in accordance with 30 CFR part 250.

**§ 256.602 What is the initial period of my sulphur lease?**

Your sulphur lease will have an initial period of not more than 10 years. The MMS will announce the initial period prior to the lease sale. Your lease will be subject to administrative cancellation after 5 years if you have not begun an exploratory well.

**§ 256.603 How may I maintain my sulphur lease beyond the initial period?**

You may maintain your sulphur lease after the initial period as long as you are producing sulphur in paying quantities; granted a suspension; or conducting drilling, reworking, plant construction, or other operations necessary to the production of sulphur.

**Lease Obligations****§ 256.605 What are my obligations as a record title owner?**

(a) As a record title owner, you are responsible for all performance on the lease, including paying any rent and royalty due. If there is more than one record title or operating rights owner, each of you are jointly and severally liable for non-monetary lease obligations, including the obligation to protect the lease from drainage and to pay compensatory royalty that may be owed. You are also jointly and severally liable for plugging and abandonment obligations that accrue while you hold record title interest. For example, this means that if you own 50 percent record title interest, MMS may hold you responsible for 100 percent of the non-monetary obligations, if your joint owner(s) default(s).

(b) For monetary obligations, such as paying rent and royalty, your obligation is proportionate to your interest. For example, if you own 25 percent of the record title interest, you are liable for only 25 percent of the rent or royalty on production. As a record title owner, you also are secondarily liable for monetary obligations of any operating rights holders on the lease.

**§ 256.606 What are my rights and obligations as an operating rights owner?**

(a) As an operating rights owner, you have the right to enter the leased area to conduct drilling and related operations including production according to the lease terms and applicable regulations.

(b) You have the right to authorize another party to conduct operations on the lease.

(c) You are jointly and severally liable with other record title owners and operating rights holders in the lease for all non-monetary lease obligations pertaining to that portion of the lease subject to your operating rights.

(d) You are liable for monetary obligations pertaining to that portion of the lease subject to your operating rights with other operating rights holders in proportion to your share of such operating rights.

**Transferring Interest in All or Part of a Lease****§ 256.610 May I sell, exchange, assign, or otherwise transfer my lease?**

No lease issued under this part may be sold, exchanged, assigned, or otherwise transferred except with the approval of MMS.

**§ 256.611 May I assign all or part of my lease interest?**

You may assign all or part of your lease interest subject to MMS approval.

Each instrument that creates or transfers an interest must describe the entire tract or describe, by officially designated subdivisions, the interest you propose to create or transfer. Officially designated subdivisions, or aliquot parts, are a half ( $\frac{1}{2}$ ), a quarter ( $\frac{1}{4}$ ), a quarter of a quarter ( $\frac{1}{4}\frac{1}{4}$ ), and a quarter of a quarter of a quarter ( $\frac{1}{4}\frac{1}{4}\frac{1}{4}$ ). We may disapprove an assignment when the assignor or assignee has outstanding or unsatisfied obligations under this chapter.

**§ 256.612 May I assign operating rights?**

You may assign your operating rights in all or part of your lease subject to MMS approval. However, you may create subleases of only two depth levels per aliquot part. Operating rights must be described by officially designated subdivisions, or aliquot parts, and limited to specific depths within those subdivisions.

**§ 256.613 How do I seek approval of an assignment?**

(a) You must request approval of each assignment and submit to MMS two originals of each instrument that creates or transfers ownership of record title or operating rights within 90 days after the last party executes the transfer agreement. You must pay the service fee listed in § 256.104 with your request.

(1) All assignments must be on the appropriate form approved by MMS.

(i) Form MMS-150 entitled, *Assignment of Record Title Interest in Federal OCS Oil and Gas Lease*.

(ii) Form MMS-151 entitled, *Assignment of Operating Rights Interest in Federal OCS Oil and Gas Lease*.

(2) When an assignment is made of 100 percent of the record title interest in an officially designated subdivision of your lease, that assignment creates a new lease. Your assignee becomes the leaseholder of the newly segregated lease that is subject to all the terms and conditions of your original lease, including the requirement to furnish a bond in the amount required in subpart E of this part.

(b) Before MMS approves an assignment, we will consult with and consider the views of the Attorney General.

**§ 256.614 How do I transfer the interest of a deceased leaseholder?**

(a) If any of the leaseholders are deceased, you as heir or devisee must provide evidence as to who are the lawful successors in interest.

(b) You as heir or devisee must submit a certified copy of an appropriate court order or decree; or if no court action is necessary, a certified copy of the will or the statements of two disinterested parties with knowledge of the facts.

(c) You as heir or devisee must submit statements that you are the person named as successor in interest along with evidence of your qualifications to hold a lease under subpart D of this part.

(d) If you do not qualify to hold a lease under subpart D of this part, you will be recognized as the successor in interest, but must divest your interest in the lease within 2 years.

**§ 256.615 What if I want to assign interests in more than one lease at the same time?**

To assign interests in more than one lease at the same time, you must file a separate form and two originals of the instrument that creates or transfers ownership for each lease assigned. However, if all leases are being transferred to the same entity, you need submit only one application letter of request for approval.

**§ 256.616 What is the effect of an assignment on an assignor's liability?**

As assignor, you are liable for all obligations, monetary and non-monetary, that accrued under your lease before MMS approves your assignment. Our approval of the assignment does not relieve you of these accrued obligations if your assignee, or any subsequent assignee, fails to perform. In addition, MMS may require you to bring the lease into compliance to the extent the obligation accrued before approval of your assignment, if your assignee or any subsequent assignee, fails to perform any obligation under the lease. You remain liable for all obligations if you create a sublease of operating rights only.

**§ 256.617 May I specify an effective date of the assignment?**

The MMS will record the assignment as effective on the date you specify. If you do not specify a date, the assignment is effective on the first day of the month following your request to assign. Regardless of the effective date, the date that we approve the assignment determines when the assignor's liabilities cease to accrue.

**§ 256.618 What is the effect of an assignment on an assignee's liability?**

As assignee, you and any subsequent assignees are liable for all obligations that have accrued or will accrue after MMS approves the assignment. As assignee, you must comply with all the terms and conditions of the lease and regulations issued under the Act, remedy all existing environmental and operational problems on the lease, properly abandon all wells, and reclaim the site as required under 30 CFR part 250.

**§ 256.619 As a restricted joint bidder, may I assign interest to another restricted joint bidder?**

If you are a restricted joint bidder, you may assign all or part of your interest in a lease to another restricted joint bidder. However, if you want to assign less than your entire interest to another restricted joint bidder, you must submit to MMS a copy of any agreements relating to your acquisition of the lease or interest. The MMS may ask the Attorney General to review your request.

**§ 256.620 Are there any interests I may assign without MMS approval?**

(a) You may create or transfer carried working interests, overriding royalty interests, or payments out of production without MMS approval. However, you must send us a copy of each instrument creating or transferring such interests for record purposes. For each lease affected, you must pay the service fee listed in § 256.104 with your documents submitted for record.

(b) If you submit documents for record purposes that are not required by these regulations, for each lease affected, you must pay the service fee listed in § 256.104 with your document submissions. The MMS may decline to accept for filing such documents and the service fee will not be refunded.

**§ 256.621 What reports must I submit for lease term pipelines when MMS approves a lease assignment?**

Within 30 calendar days after MMS approves an assignment of a lease, or approves a new designation of operator for a lease under § 250.143 or § 250.144, you (the new lessee or designated lease operator) must submit a report to the Regional Supervisor that:

(a) Lists every lease term pipeline (see definition at § 250.105), including decommissioned pipelines on the lease; and

(b) Indicates which pipelines remained as lease term pipelines after the lease assignment was approved by MMS.

**Helium**

**§ 256.630 What must a lessee do if MMS elects to extract helium from a lease?**

(a) The MMS reserves the ownership of, and the right to extract, helium from all gas produced from your OCS lease. Under section 12(f) of the Act, 43 U.S.C. 1341(f), upon our request, you must deliver all or a specified portion of the gas containing helium to us at a point on the lease or an onshore processing facility that we designate.

(b) The MMS will determine reasonable compensation and pay you for any loss caused by the extraction of

helium, except for the value of the helium itself. We may erect, maintain, and operate on your lease any reduction work and other equipment necessary for helium extraction. Our extraction of helium will be conducted in a manner to not cause substantial delays in the delivery of gas to your purchaser.

### Subpart G—Ending a Lease

#### § 256.700 How does a lease end?

Your lease will expire by its own terms at the end of its initial period, if you have not taken actions to extend the lease through production in paying quantities, drilling operations, workover operations, or a suspension under 30 CFR part 250.

#### § 256.701 May I end the lease myself?

You may join with all record title owners to relinquish all or any officially designated subdivision of your lease at any time by filing three original copies of your request with MMS on Form MMS-152 entitled, *Relinquishment of Federal OCS Oil and Gas Lease*. The relinquishment is effective on the date of filing. Relinquishing your lease does not relieve you of any accrued obligations, either monetary or non-monetary.

#### § 256.702 Will MMS end my lease?

(a) The MMS may cancel your lease under section 5(a) of the Act, 43 U.S.C. 1334(a), if we find that continued activity would probably cause serious harm or damage to life, property, any mineral, National security or defense, or to the marine, coastal, or human environment; that the threat or harm or damage will not disappear or decrease to an acceptable level within a reasonable period of time; and that the advantages of cancellation outweigh the advantages of continuing the lease. Refer to 30 CFR part 250, subpart A, for procedures on lease cancellation and compensation.

(b) The MMS may cancel your non-producing lease if you fail to comply with any provision of the Act, lease, or applicable regulations, if the failure continues for 30 days after we send you written notice of such failure. Cancellation is subject to judicial review under section 23(b) of the Act, 43 U.S.C. 1349(b).

(c) The MMS may cancel your producing lease if you fail to comply with any provision of the Act, lease, or applicable regulations, only after the judicial proceedings required under section 5(d) of the Act, 43 U.S.C. 1334(d).

(d) The MMS may cancel your lease if we find proof that the lease was

obtained by fraud or misrepresentation. You will have notice and an opportunity to be heard prior to lease cancellation.

### Subpart H—[Reserved]

### Subpart I—Bonus or Royalty Credits for Exchange of Certain Leases

#### § 256.900 Which leases may I exchange for a bonus or royalty credit?

You may exchange a lease for a bonus or royalty credit if it:

- (a) Was in effect on December 20, 2006, and
- (b) Is located in:
  - (1) The Eastern planning area and within 125 miles of the coastline of the State of Florida, or
  - (2) The Central planning area and within the Desoto Canyon OPD, the Destin Dome OPD, or the Pensacola OPD and within 100 miles of the coastline of the State of Florida.

#### § 256.901 How much bonus or royalty credit will MMS grant in exchange for a lease?

The amount of the bonus or royalty credit for an exchanged lease equals the sum of:

- (a) The amount of the bonus payment; and
- (b) All rental paid for the lease as of the date the lessee submits the request to exchange the lease under § 256.902 to MMS.

#### § 256.902 What must I do to obtain a bonus or royalty credit?

(a) To obtain the bonus or royalty credit, all of the record title interest owners in the lease must submit the following to the MMS Regional Supervisor for Leasing and Environment for the GOM on or before October 12, 2010:

(1) A written request to exchange the lease for the bonus or royalty credit, signed by all record title interest owners in the lease.

(2) The name and contact information for a person who will act as a contact for each record title interest owner.

(3) Documentation of each record title interest owner's percentage share in the lease.

(4) A list of all bonus and rental payments for that lease made by, or on behalf of, each of the current record title owners.

(5) A written relinquishment of the lease as described in § 256.701. Notwithstanding § 256.701, the relinquishment will become effective when the credit becomes effective under paragraph (b) of this section.

(b) The credit becomes effective when MMS issues a certification to the record

title interest owners that the lease has qualified for the credit.

#### § 256.903 How is the bonus or royalty credit allocated among multiple lease owners?

The MMS will allocate the bonus or royalty credit for an exchanged lease to the current record title interest owners in the same percentage share as each owner has in the lease as of the date of the request to exchange the lease.

#### § 256.904 How may I use the bonus or royalty credit?

(a) You may use a credit issued under this part in lieu of a monetary payment due under any lease in the Gulf of Mexico not subject to the revenue distribution provisions of section 8(g)(2) of the OCSLA (43 U.S.C. 1337(g)(2)) for either:

(1) A bonus for acquisition of an interest in a new lease; or

(2) Royalty due on oil and gas production after October 12, 2010.

(b) You may not use a bonus or royalty credit in lieu of delivering oil or gas taken as royalty-in-kind.

(c) If you have any credit that remains unused after 5 years from the date MMS issued the credit, MMS reserves the right to apply the remaining credit to your ongoing obligations.

#### § 256.905 How do I transfer a bonus or royalty credit to another person?

(a) You may transfer your bonus or royalty credit to any other person by submitting to the MMS Adjudication Unit for the Gulf of Mexico two originally executed transfer letters of agreement.

(b) Authorized officers of all companies involved in transferring and receiving the credit must sign the transfer letters of agreement as indicated on the qualification card filed with MMS.

(c) A transfer letter of agreement must include:

(1) The effective date of the transfer,

(2) The OCS-G number for the lease that originally qualified for the credit,

(3) The amount of the credit being transferred,

(4) Company names punctuated exactly as filed on the qualification card at MMS, and

(5) A corporate seal, only if MMS used a corporate seal qualification process for your corporation.

(d) The transferee of a credit transferred under this section may use it in accordance with § 256.904 as soon as MMS sends a confirmation of the transfer to the transferee.

## PART 260—OUTER CONTINENTAL SHELF OIL AND GAS LEASING

5. The authority citation for 30 CFR part 260 is revised to read as follows:

**Authority:** 43 U.S.C. 1334.

6. Amend 30 CFR part 260 by removing Subpart D.

[FR Doc. E9-12155 Filed 5-26-09; 8:45 am]

BILLING CODE 4310-MR-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R09-OAR-2009-0133; FRL-8909-7]

#### Approval and Promulgation of Air Quality Implementation Plans; California; Finding of Attainment of the 1-Hour Ozone Standard for the Ventura County Area

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** On April 15, 2009 the California Air Resources Board (CARB) requested that EPA find that the Ventura County ozone nonattainment area has attained the revoked 1-hour ozone National Ambient Air Quality Standard (NAAQS). After a review of this submission and of the relevant monitoring data, EPA is proposing to make such a finding.

This finding would relieve the area of the requirement to implement contingency measures for failure to attain the standard by its attainment date, as well as Clean Air Act penalty fee requirements for severe and extreme ozone nonattainment areas that have not attained the 1-hour standard by the applicable attainment date.

**DATES:** Any comments on this proposal must arrive by June 26, 2009.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R09-OAR-2009-0133, by one of the following methods:

1. *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
2. *E-mail:* [nudd.gregory@epa.gov](mailto:nudd.gregory@epa.gov).
3. *Fax:* (415) 947-3579.
4. *Mail or Delivery:* Greg Nudd (AIR-2), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

**Instructions:** Direct your comments to Docket ID No. EPA-R09-OAR-2009-0133. EPA's policy is that all comments received will be included in the public docket without change and may be

made available online at *http://www.regulations.gov*, including any personal information provided, unless a comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket:** The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., confidential business information). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Greg Nudd, Environmental Engineer, EPA Region IX, (415) 947-4107, [nudd.gregory@epa.gov](mailto:nudd.gregory@epa.gov).

#### SUPPLEMENTARY INFORMATION:

Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

This proposal addresses the California Air Resources Board (CARB) request that EPA find that the Ventura County ozone nonattainment area has attained the revoked 1-hour ozone National Ambient Air Quality Standard (NAAQS). In the Rules and Regulations section of this **Federal Register**, we are

making this finding as a direct final rule without prior proposal because we believe this action is not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in a subsequent action based on this proposed rule.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: May 14, 2009.

**Jane Diamond,**

*Acting Regional Administrator, Region IX.*

[FR Doc. E9-12137 Filed 5-26-09; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 260 and 261

[EPA-HQ-RCRA-2009-0315; FRL-8905-6]

RIN 2050-AG31

#### Definition of Solid Waste Public Meeting

**AGENCY:** Environmental Protection Agency.

**ACTION:** Definition of Solid Waste Notice of Public Meeting and Request for Comments.

**SUMMARY:** The Environmental Protection Agency (EPA) is announcing a public meeting regarding the Agency's recent regulation on the definition of solid waste under Subtitle C of the Resource Conservation and Recovery Act (RCRA). Specifically, EPA is currently reviewing a petition filed with the Administrator under RCRA section 7004(a) requesting that the Agency reconsider and repeal the recently promulgated revisions to the definition of solid waste for hazardous secondary materials being reclaimed, and is soliciting comments and information to assist the agency in evaluating the petition. EPA does not plan to repeal the rule, but is interested in receiving comments on possible revisions to the rule. Persons may register to speak at the public meeting or may submit written comments to the address below.

**DATES:** The public meeting will be held on June 30, 2009, from 9 a.m. to 4:30 p.m. The closing date for advance registration is June 23, 2009. Persons may also submit written or electronic comments by July 14, 2009 (*see ADDRESSES*). The administrative record